TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 248.

GEORGE W. PEETE, APPELLANT,

vs.

CHARLES MORGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED NOVEMBER 13, 1872.

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INDEX.

	Original.	Print.
Bill, of complaint	1	1
Order, from rule and order book	13	8
Notice of hearing and marshal's return	14	8
Defendant's answer	15	9
Exhibit A	37	15
B	38	15
C	39	16
D	40	16
E	43	17
Opinion of court	44	21
Decree	45	21
Appeal bond	47	22
Writ of injunction	50	23
Clerk's certificate	54	24

1 In the circuit court of the United States for the eastern district of Texas.

Be it remembered, that in the cause lately pending in said court, numbered 58 on the equity docket thereof, wherein Charles Morgan was complainant and George W. Peete was defendant, the following proceedings were had therein, to wit:

Bill of complaint.—Filed June 11th, 1872.

To the honorable the judges of the circuit court of the United States *States* for the eastern district of Texas, sitting in Galveston. In equity.

Charles Morgan, of the city of New York, and a citizen of the State of New York, brings this, his bill, against George W. Peete, of the city of Galveston, a citizen of the State of Texas, and residing within said district.

And thereupon your orator complains and says that he is now, and has been since & before the tenth day of May, A. D. 1872, the sole owner of the following steamships, to wit:

The W. G. Hewes, of the burden of twelve hundred & fifty tons or thereabouts.

The Morgan, of the burden of 1,000 tons or thereabouts.
" St. Mary, " " " " 1,100 " " "
2 The Agnes, of the burden of 600 tons or thereabouts.
" Harlan, " " " " 1,180 " " "
" Hutchinson, " " " " 1,400 " " "
" Austin, " " " " 900 " " "
" Clinton, " " " " 1,100 " " "

All belonging to the port of New York, and running between the city of New Orleans, in the State of Louisiana, and by way of the port of Galveston, to the port of Indianola, in the State of Texas, and back to New Orleans, by the same route.

That your orator is also the sole owner of the following steamships, to wit:

The Josephine, of the burden of 1,200 tons or thereabouts.
" Whitney, " " " " 1,360 " "
" City of Norfolk, " " " " 780 " "
" Alabama, " " " " 600 " "
" Matagorda, " " " " 700 " "

All belonging to the port of New York, and running from the port of Brashear, in the State of Louisiana, by the port of Sabine, in the State of Texas, and then back to Brashear.

That your orator is the sole owner of the steamship I. C. Harris, of the burden of one thousand tons or thereabouts; said steamship belonging to the port of New York, and running from the port of New Orleans, by way of the port of Galveston, to the port of Brazos
3 Santiago, in said State, and back by the same route.

That your orator, on, before, ever since the 1st of May, A. D. 1872, was, and is now, engaged in running said vessels to and from said ports, carrying the United States mail, passengers, and freight for hire.

That the said George W. Peete, since the tenth day of May, A. D. 1872, until the present time, without any lawful authority, under the pretence of collecting quarantine dues to defray the expenses of keeping up a quarantine at said port of Galveston, by force and threats to

stop said steamships, and fine & imprison the commanders, compelled your orator to pay for and on account of each steamer each time it entered the port of Galveston a tonnage-duty of five dollars for the first one hundred tons burden, and also further tonnage-duty of one and one-half cents for each and every additional ton burden over one hundred tons. That said duties not only have been exact' and paid by your orator since the said 10th day of May, 1872, but that the said George W. Peete, representing himself as the quarantine and health officer at the port of Galveston, threatens to continue said illegal exactions at
4 the said port whenever any of said steamships touch at the same, either in going or returning from Louisiana to any of said ports.

That your orator has, from time to time, and at all times, through the captains & pursers of said steamships, and through his agent in the port of Galveston, protested against said illegal exactions, and as evidence thereof offers the certificate of the said George W. Peete, a copy of which is hereunto attached marked Exhibit A, and prayed to be taken as a part of this bill of complaint.

That the whole expense of conducting and enforcing said quarantine regulations for the port of Galveston is undertaken by the defendant George W. Peete, by contract with the city of Galveston, at the sum of four hundred and twenty dollars for each month; and that the said amount is the entire sum paid out for said quarantine regulations and all the expenses incident thereto.

That the sum already exacted & extorted from your orator by the said George W. Peete amounts to the sum of seven hundred dollars or thereabouts; that said sum only includes the amount paid from the 10th of May, 1872, until the first of June, 1872, a space of twenty-two days.

That the sum paid by your orator alone by their illegal exactions amounts to upwards of one thousand dollars per month to pay the
5 pretended expenses of a quarantine that, with all contingencies added, has never amounted to four hundred and fifty dollars per month.

That the action of said defendant is pretended to be based upon the proclamation of the honorable Albert Somerville, mayor of the city of Galveston, dated May 4th, 1872; the proclamation of the governor of the State of Texas, dated April 4th, 1872, and upon an act of the legislature of the State of Texas approved June 10th, 1870, entitled "An act authorising quarantine on the coast of Texas & elsewhere within the State," together with amendment to said act approved on the 13th of August, 1870, a copy of which several proclamations is herewith filed, marked Exhibit B, and prayed to be taken as part of this bill of complaint; and which, with acts of the legislature, will be used at the hearing of the cause.

That neither of the steamships aforesaid steam from or touch at any sea-port or coast south of north latitude twenty-five degrees.

That neither of said ships steam from or touch at any infected port or district, or at any port where infectious or contagious diseases prevail, or are so declared by the governor, mayor, or health-officer.

6 That the exactions aforesaid made upon your orator for and on account of his said steamships are not authorized by said acts of the legislature or proclamations thereon founded, nor intended to be included therein.

That, should said acts and proclamations be legally construed so as to include these exactions in their scope and tenor, then your orator is advised and believes that said acts of the legislature and the proclamations of the governor and mayor thereon founded, in all such their

various provisions are invalid as being in violation of the Constitution of the United States.

That the duties threatened to be exacted from your orator under the pretence of quarantine dues in and for the port of Galveston, and levied to pay the expenses of the said quarantine, amount to more than twice the sum necessary to support and enforce the most stringent quarantine regulations.

That, by said proclamation of the State of Texas, said exactions will be made by the said George W. Peete until the tenth day of November next ensuing, by which time, if not relieved by your honors, your orator will have to pay the amount of five thousand dollars and more towards

7 the payment of quarantine expenses, which is an onerous burden to commerce, oppressive and unjust towards your orator, and in violation of the Constitution of the United States.

That your orator at all times, is now, and ever has been, willing to aid the authorities of the State of Texas and the city of Galveston in preventing the introduction of any infectious or contagious disease into the said port of Galveston, and, indeed, did not his feelings, his interest would require such action; and your orator here states his perfect willingness to a fair visitation-fee, and to pay the same whenever the said defendant may consider it proper to visit all or any of his said ships.

That, should any contagious or infectious disease prevail at any port at which either of said steamships enters or touches, he will willingly submit to any exaction, however onerous, or remove his said ships from said route of travel and trade.

That said dues and fees exacted under the pretence of enforcing said proclamations & acts of the legislature are grossly extortionate, unprecedented, and illegal, operates as an onerous burden on commerce, and is in direct violation of the Constitution of the United States.

That your orator is at all times willing to do all that could be reasonably desired to aid & contribute to the prosperity of the port &

8 city of Galveston, yet he does not believe that he should be required to pay more than double the whole expense of the quarantine established at said port, and that, too, at a season of the year when the smallest number of passengers and the least amount of freight are transported between said ports.

In consideration whereof, and forasmuch as your orator is entirely remediless at common law, and can only have adequate relief in a court of equity,

To the end, therefore, that the said George W. Peete, pretending to act under and by virtue of the said acts of the legislature and the proclamation of the governor of said State, may full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated, and that he may be enjoined and restrained by the orders and injunctions of this honorable court from collecting any further any of said duties and fees hereinbefore mentioned, and may account to your orator and return the various amounts by him received, and that your orator may have such other and further relief in the premises as the nature of his case shall require and to your honors shall seem meet:

May it please your honors to grant to your orators not only

9 the writ of injunction prayed for, issuing out of this honorable court, to be directed to the said George W. Peete, to restrain him from proceeding under said acts & proclamations, or from demanding or exacting from your orator, his captains, pursers, or agents, any duties, taxes, or fees, on account of his said steamships herein enumerated,

touching any of the matters in question; and, also, a writ of subpœna, to be directed to the said George W. Peete, commanding him to be and appear within the time prescribed by law to answer the premises and exigencies of the bill, and to stand to, abide by, and perform such orders and decrees therein as to your honors shall seem meet. And your orators shall ever pray, &c.

CHARLES MORGAN.

T. N. WAUL,
Sol'r & Coun. for Compl't.

Personally appeared before me Charles Fowler, agent and attorney in fact of Charles Morgan, complainant, in the foregoing bill of complaint, who, being duly sworn, says the matters & things set forth in said bill are within his own knowledge; and that the same are true in substance and fact.

CHA'S FOWLER,
Agent for Cha's Morgan.

10 Subscribed & sworn to *to* before me this 3rd June, 1872.

LEVI JONES,
Clerk U. S. Circ't Court, E. D. T., G.

Copy of Exhibit A.

GALVESTON, *May 22nd*, 1871.

I hereby acknowledge that the captains, pursers, & agents of the Morgan line of steamers, running from N. Orleans to Indianola, from N. Orleans to Brazos Santiago, touching, going, and returning at this port, also the steamers running from New Orleans to this port, and from Brashear City, La., to this port, have protested against the payment of the quarantine-fees collected by me, now & hereafter, as being without legal authority, & have paid the same, & will pay the same so long as exacted, under protest and from compulsion.

GEO. W. PEETE,
Health-Officer.

CHARLES MORGAN
vs.
GEORGE W. PEETE. } No. . In chancery.

The clerk of the circuit court will set down for hearing on
11 Thursday, the 14th day of June, 1872, at 10 o'clock a. m., or so soon after, on that day or day following, as the same can be heard, an application for an injunction in the above cause, upon notice served upon the defendant, George W. Peete, and duly returned to me at Galveston.

JOSEPH P. BRADLEY,
Associate Justice of Supreme Court, U. S.

12 EXHIBIT "B."

Notice of quarantine.

MAYOR'S OFFICE,
Galveston, Texas, May 1st, 1872.

Notice is hereby given that, by virtue of a proclamation of his excellency the governor of the State of Texas, and of a statute law of the

State, quarantine of Galveston Pass and Port will be established from and after the 10th inst.

The quarantine anchorage is hereby fixed at a point between the inner bar and a line drawn from Fort Point across the channel to the quarantine buoy on the western side thereof.

For the information of all concerned, the proclamation of his excellency the governor, together with the law regulating quarantine, is herewith published, and a strict compliance with the same will be exacted.

ALBERT SOMERVILLE,
Mayor.

Proclamation by the governor of the State of Texas.

To all to whom these presents shall come:

I, Edmund J. Davis, governor of Texas, by virtue of authority vested in me by a law of the legislature of the State of Texas, approved June 10, 1870, entitled "An act authorizing quarantine on the coast of Texas and elsewhere within the State," do hereby declare quarantine on the coast of Texas, and direct the authorities of every corporate town on the coast to carry out the provisions of said act.

Quarantine to extend to all vessels sailing from, or touching at, any sea-port or coast south of north latitude 25 degrees, to wit, the western coast of Africa, the West India Islands, the eastern coast of South America, of Central America, and of Mexico, and from Key West, Florida.

It is further directed that the health officers at the respective ports shall, as soon as they are reliably informed of the existence of infectious or contagious diseases at any other port, city, town, or village, not herein specially included, within this State or out of it, declare vessels arriving from such places subject to quarantine and to all regulations established for the enforcement of same.

This quarantine to commence on the tenth day of May, and to continue until the tenth day of November next, unless sooner suspended.

Vessels sailing from or touching at any port or any coast above mentioned, and entering any port on the coast of Texas during the continuance of quarantine of such port, if free from disease, shall be detained ten days and such other time as will complete a term of twenty-five days since such vessel left the infected port, and if no disease appears, shall then be allowed to pass. Vessels upon which contagious or infectious diseases appear shall be detained for twenty-five days after all disease has disappeared from such vessel or vessels, and then allowed to pass.

Health-officers are directed also to provide and enforce such regulations as will prevent all communication with vessels in quarantine. These officers will also provide for the thorough disinfection of all vessels on which there has been any contagious or infectious disease, before they are allowed to leave quarantine. All expenses necessary to such disinfection to be paid by the vessel.

Quarantine stations for the enforcement of this proclamation, are hereby established at Sabine Pass, Galveston Pass, Pass Caballo, Aransas Pass, and Brazos, Santiago. The quarantine stations shall be established by the proper health-officer at each of these passes, as near the outer bar as possible, looking to the safety of vessels lying at anchor, and convenient in boarding same.

The health-officer of Brazos Santiago, shall also supervise vessels entering at the mouth of the Rio Grande.

The health-officer to be appointed by the corporate authorities of Galveston is charged with the enforcement of this proclamation at Galveston Pass; the one to be appointed at Indianola, for Pass Caballo; Dr. P. B. Turpin, at Aransas Pass; Dr. J. M. Main, at Brazos Santiago and the mouth of the Rio Grande; and the one to be appointed at Sabine City, for Sabine Pass.

The county authorities of the counties on the Rio Grande are authorized and directed, until this quarantine is suspended, to establish such regulations as will prevent the importation of disease into this State by land.

The authorities of all sea-port towns are referred to chapters four and fifty-five of the general laws of 1870, for such other information as they may require for their guidance.

In testimony whereof I have hereunto set my hand and caused the [L. S.] great seal of the State to be affixed, at the city of Austin, this fourth day of April, A. D. 1872, and of the Independence of the United States of America the ninety-sixth, and Texas the thirty-seventh.

EDMUND J. DAVIS.
Governor of Texas.

By the governor:
JAMES P. NEWCOMB,
Secretary of State.

An act authorizing quarantine on the coast of Texas and elsewhere within the State.

SECTION 1. *Be it enacted by the legislature of the State of Texas*, That the governor is hereby authorized and empowered to issue his proclamation declaring quarantine on the coast of Texas, whenever, in his judgment it shall be necessary, and for such length of time as he may decide to be essential, to prevent the introduction of any infectious or contagious disease.

SEC. 2. It is hereby made the duty of the corporate authorities of each and every town or city upon the coast of Texas, at as early a moment as practicable after the promulgation of the proclamation of the governor, as in section one provided, to establish a quarantine station at a sufficient distance from the usual place of landing of vessels at their respective towns and cities, and to appoint, select, and employ a competent and good physician as the health-officer at such station, and to furnish said officer with all things necessary for the proper and efficient discharge of his duties; and said town or city corporation shall have power to provide for quarantine, and to enforce the same by ordinance.

SEC. 3. It shall be the duty of said health-officer to stop every vessel from an infected port or district, and to make a rigid examination of the said vessel, notwithstanding the said vessel may have a clean bill of health, and if deemed necessary to, (and he is hereby empowered so to do,) to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port.

And the said health-officer shall detain said vessel at quarantine for such length of time as may be designated by the governor in his proclamation establishing said quarantine; and he may use force, if necessary, in order to discharge the duties imposed upon him by this act.

Wherever on the coast of Texas there shall be no town or city corporation, and quarantine be there required, the governor shall have power to appoint a health-officer, and to prescribe such regulations for the quarantine of such places as he may deem necessary.

An act to amend an act entitled "An act authorizing quarantine on the coast of Texas and elsewhere within the State," approved June 10, 1870.

SECTION 1. *Be it enacted by the legislature of the State of Texas*, That section four of an act entitled "An act authorizing quarantine on the coast of Texas and elsewhere within the State," approved June 10, 1870, be, and the same is hereby, amended so as to read as follows, to wit:

SEC. 4. *Be it further enacted*, That any vessel arriving at quarantine stations, designated by the authorities aforesaid, from an infected port, without a clean bill of health from the proper officer of said port, shall be taken possession of by the health-officer at the station at which such vessels arrives, and the master thereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five hundred nor more than five thousand dollars, and the said vessel shall be held by the health-officer until said fine and costs are paid, or said vessel replevied; provided that the payment of the fine, which may be assessed against the master of said vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rule shall apply and shall be observed, as in cases of other vessels; and in order to speedy trial and adjudication of all cases arising under the fourth and sixth sections of this act, the mayor of each town or city shall have concurrent jurisdiction with the district court of this State.

SEC. 5. That each and every master of a vessel that passes, or attempts to pass, said quarantine station without first having permission from the health-officer so to do, shall be deemed guilty of felony, and on conviction thereof before the district court of this State, shall be imprisoned in the penitentiary for any term not less than one year nor more than five years, or fined in any sum not less than five hundred nor more than ten thousand dollars.

SEC. 6. Any person belonging to a vessel when placed under quarantine, who shall go ashore without the written permission of the health-officer at that station, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than fifty nor more than five hundred dollars for each and every offense; and any master or officer of said vessel, or other person, who shall land, or permit to be landed, any goods, wares, or merchandise whatever, from said vessel, while under quarantine, without the written permission of the health-officer aforesaid, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than fifty nor more than one thousand dollars, for each and every article of goods, wares, or merchandise so landed.

SEC. 7. There shall be collected by the examining health-officer from every vessel arriving at each and every quarantine station, the following fees, to wit:

For every vessel of one hundred tons burden or under, the sum of five dollars; from every vessel over one hundred tons burden, the sum of five dollars, and also a further fee of one and one-half cents for each and every ton. The aforesaid fees, collected as aforesaid, shall be re-

ported to the corporate authorities of the town or city at which such quarantine is established, and all fees and fines as hereinbefore provided for shall be used to defray the expenses of keeping said quarantine.

SEC. 8. It shall be the duty of the town or city authorities aforesaid, as soon as the quarantine ceases to exist, to make a succinct statement of receipts and expenditures, and forward the same to the comptroller of the State; and should the expenditures amount to a greater sum than the receipts, they shall draw from the treasury of the State, upon an order from the comptroller, the excess of such expenditures over the receipts, as in other cases made and provided; and should the receipts exceed the expenditures, the aforesaid town or city authorities are hereby authorized and empowered to appropriate and use such excess for the maintenance of marine hospitals in their respective towns or cities; provided that nothing herein contained shall prevent any town or city in the State from establishing a quarantine which they may think necessary for the preservation of the health of said town or city, not applicable to the provisions of this act.

Approved August 13, 1870.

13 [From the rule and order book.]

CHARLES MORGAN, COMPLAINANT, *v.* GEORGE W. PEETE, DEFENDANT. } No. 58. In equity.

By direction of the Hon. J. P. Bradley, associate justice of the Supreme Court U. S., the application for an injunction in the above cause is set down for hearing at Galveston before the hon. the said judge on Thursday, June 13th, 1872, at 10 o'clock a. m., or so soon after on that day or day following as the same can be heard.

Attest:

LEVI JONES,
Clerk U. S. Circ't Court, E. D. T., G.

GALVESTON, *June 11th*, 1872.

14 *Notice to defendant.—Filed June 11th*, 1872.

United States circuit court, eastern district of Texas. In equity.

CHARLES MORGAN, COMPL'T, *against* GEORGE W. PEETE, DEFENDANT. } No. .

Dr. GEORGE W. PEETE:

SIR: You will please take notice that the complainant will apply for an injunction in the above-named cause before the Honorable Joseph P. Bradley, in the city of Galveston, at 10 o'clock a. m. of Thursday, the 13th of June inst., or so soon thereafter on that day, or the day following, as the same can be heard, when and where you may appear & contest the same if you think proper.

T. N. WAUL.
Sol. for Compl't.

JUNE 11, 1872.

Marshal's return.

Rec'd this writ June 11th, 1872. Executed same day by reading this writ to the within-named defendant, and serving him with a copy of the same.

WM E. PARKER,
U. S. Marshal.
By FRANK MITCHELL, *Dep't.*

15 *Defendant's answer.—Filed June 15th, 1872.*

In the circuit court of the United States for the eastern district of Texas, sitting at Galveston.

CHARLES MORGAN, COMPLAINANT,
against
GEORGE W. PEETE, DEFENDANT. } No. 58. In equity.

And now comes George W. Peete, the defendant in the above-entitled suit, and for answer to the matters and things set forth in the bill of complaint of the complainant, herein filed and exhibited against him, this defendant says that he admits the citizenship as stated in the bill of complaint, and defendant says that he is now, and for several years past has been, a resident and citizen of the city and county of Galveston & State of Texas, and a qualified voter therein.

And defendant further says that the city of Galveston is a body politic and corporate under and by virtue of the laws of the State of Texas, and that Albert Somerville is the present mayor thereof, and that
16 preceding him Edward T. Austin was mayor pro tem., and James A. McKee was mayor of said city, but under a pre-existing charter; that the present charter of said city is declared to be a public act, and is entitled "An act to incorporate the city of Galveston, and to grant a new charter to said city, and to repeal all acts heretofore passed incorporating said city which may be in force by virtue of any existing charter," and which said act was passed by the legislature of the State of Texas, and was approved May 16, 1871, and to which said act this defendant prays leave to refer as often as may become necessary.

And this defendant, further answering, says that some time in the month of June, A. D. 1871, this defendant was appointed, by the city council of the city of Galveston, health-physician of the city of Galveston, and that this defendant duly qualified as such, and is the health-physician of said city.

That on or about the 5th day of March, 1872, the said city council of the city of Galveston, by an ordinance approved on that day,
17 ordained that the health-physician of the city of Galveston should be also quarantine-physician of said city, and also prescribed certain duties to be also performed by him, the said physician.

Defendant, further answering, says that prior to his said appointment in June last as health-physician, under said new charter, that he had held the position of health-officer under said city. A substantial copy of his commission under Edward T. Austin, mayor pro tem., and also of that under James A. McKee, mayor, is hereunto attached, and made a part hereof, and marked respectively A & B.

And defendant further says that, after having been so appointed health-officer under one or more of the ordinances anterior to the new charter, that a contract was entered into and signed by said Edward T.

Austin, mayor pro tem., Galveston City, May 1st, 1870, and subsequently the same was made and agreed to for the quarantine term of the year 1871 by said James A. McKee, mayor, and that after-
18 wards, to wit, some time in the month of May, 1872, and after the proclamation of the governor and the mayor, specified in complainant's bill of complaint, the same was agreed to be in force for the present year, and was signed A. Somerville, mayor, Galveston, 1872; which said contract or authorization was agreed to by this defendant, and a substantial copy whereof is hereunto attached and made a part hereof, and marked "C."

And the said defendant further says that he has complied, and is complying with the said contract on his part, and is receiving the said monthly sum of four hundred and twenty dollars, agreeably to the terms of said contract, so called, or authorization of said mayor as aforesaid.

And defendant, further answering, says that on or about the fourth day of April, 1872, that the governor of Texas, Edmund J. Davis, made his proclamation of quarantine, as set forth in complainant's bill of complaint, and that thereafter, to wit, on the 1st day of May,
19 1872, the mayor of Galveston, to wit, Albert Somerville, issued his proclamation, as is also therein stated, and defendant also says that thereafter the said mayor executed a renewal of said contract or authorization originally made with said Austin, mayor pro-tem., as aforesaid and hereinafter referred to.

And said defendant, further answering, says that he admits that said proclamations are based on the laws of the State of Texas, embraced in and set forth in said exhibit to said complainant's bill of complaint.

And defendant further says that his collections of fees of and from the vessels of plaintiff are based upon the authority given by said laws, and his rights and duties as an officer as aforesaid, and the rights and duties of the city of Galveston, and the duties and authorities given by and under said laws and proclamations, and said contract.

And defendant, further answering, says that he admits that com-
20 plainant is and was the owner of the steamships named, and that the same were of the tonnage mentioned in complainant's bill of complaint at the times therein specified, and that they were of the ports therein named, and that the same are run to and from, and touch at, the places or ports as is in the said bill of complaint stated and set forth, and that said vessels carry the United States mail, passengers, and freight for hire.

And defendant, further answering, says that he admits that, since the 10th day of May, A. D. 1872, that he has collected, as examining health-officer at Galveston, the quarantine fees prescribed in the law set forth in complainant's bill of complaint, and to the amount therein stated, of the plaintiff or his vessels. And defendant says that the same fees were likewise collected from other vessels owned by other parties.

And defendant says that he is the health & quarantine physician of the city of Galveston, and is duly qualified and acting as such,
21 and has so been, and that such quarantine having been proclaimed by the governor of the State of Texas, and the mayor of the city of Galveston, under the laws of the State of Texas, as set forth by complainant, and the mayor having renewed said contract and directions, originally made by and with said Austin, mayor, as hereinbefore stated and set forth, this defendant says that he is advised and believes that such collection of fees as set forth and directed in the said law, was not unlawful, nor without lawful authority, but that, on

the contrary, the same is and was legal for him to do, by virtue of the premises, and that other than such collection of fees that this defendant has made no demand upon complainant or his vessels, or officers or agents for the payment of monies or dues.

And defendant denies that he has used any force or threats to stop said steamships, and fine and imprison the commanders for the
22 collection of said dues other than this, that he has claimed the right to execute said quarantine laws, by virtue of the authority hereinbefore set forth, and the right to enforce the same by due process of law, and that he has claimed that it was the duty of all vessels, their owners, officers, and agents, to obey said laws and proclamations set forth in complainant's bill of complaint. And this defendant says that this is the only compulsion meant or alluded to by him in his certificate of May 22d, 1871, a copy whereof is made a part of plaintiff's bill of complaint. But defendant admits that the complainant and the commanders of his vessels, and his officers and agents, have always refused to pay said quarantine fees or dues, except under protest, against the validity of the laws set forth in complainant's bill of complaint, and the proclamations thereunder.

Defendant, further answering, says that he is now, and has
23 been for many years last past, a competent physician, and so regarded and esteemed by the public.

And defendant, further answering, says that the port of Galveston and quarantine station are within the limits of the State of Texas, and the corporation of the city of Galveston.

And, further answering, says that the salary received by him under said contract is four hundred and twenty dollars for each and every month during the existence of quarantine; but he says that that is not the whole expense of conducting and enforcing said quarantine regulations for the port of Galveston, but that that is all that is received by this defendant, but that it is not all of of the expenses incident to the enforcing of said quarantine.

Defendant admits the collection of the fees aforesaid, expressed in section 7 of the amendatory act specified in complainant's bill of complaint, approved August 13, 1870, entitled "An act to amend
24 an act entitled 'An act authorizing quarantine on the coast of Texas, and elsewhere within the State,'" approved June 10, 1870, of and from complainant, as examining health-officer as aforesaid, and claims the right to continue so to do from every vessel arriving at the quarantine station of Galveston, or at the pass & port of Galveston, from without the port of Galveston, whether belonging to complainant or not, or whether running between any of the ports indicated in the bill of complainant or not.

Defendant admits that complainant has, from time to time, through the captains and pursers of his steamships, and his agent at the port of Galveston, protested against the quarantine fees collected by defendant, and against their future collection, as indicated in his said Exhibit A. But defendant says that the compulsion therein alluded to was not any force or violence of defendant, as a person, or intended to be
25 used as a person, but from the force or compulsion of the law, and the proclamations of the governor and mayor, a copy of which laws are made a part of plaintiff's bill of complaint.

Defendant admits that the amount collected by him as such health-physician, or officer of quarantine, fees from plaintiff, from the 10th day of May until the 1st of June, 1872, under protest as aforesaid, is seven hundred dollars, or thereabouts, and that such fees were due under, and

by virtue of, said laws, as he verily believes, and he respectfully submits the same to this honorable court, as he is advised and believes that the same is a question of law, and which are the same sums and moneys alleged and described by complainant's bill of complaint as "illegal exactions," "extortions," "duties," and as a "tonnage duty," and none other.

And defendant says that he never charged any quarantine fees,
26 by whatever name the same may called in plaintiffs' bill of complaint, save to vessels arriving at Galveston pass and port, at the quarantine station thereat, and visited by him as health-officer as aforesaid, as and for sanitary purposes only, and with and for the view of carrying out the quarantine laws, and the proclamations thereunder.

Defendant, further answering, says that the fees due from complainant's vessels generally average or amount to about eight hundred dollars per month, and that the expenses of quarantine amount to about six hundred and fifty dollars a month, including salary of defendant and all other expenses.

Defendant says that his action in the premises complained of is based upon the proclamations and law, and amended law referred to in Exhibit "B" of the bill of complaint, and upon the authority conferred upon him by the city of Galveston aforesaid, as health-physician & quarantine-physician, and his contract or authorization hereinbefore stated.

27 Defendant admits and says that none of the steamships aforesaid, of plaintiff, steam from, or touch at, any sea-port or coast south of north latitude twenty-five degrees, but says that those steamships plying between New York and Galveston pass through a lower latitude, or south of north latitude twenty-five degrees, and that deseases of an infectious and pestilential character frequently break out on shipboard of vessels travelling in those latitudes.

And defendant, further answering, says that he admits that, at the present time, *that* neither of the ships of complainant steam from, or touch at, any infected port or district, or at any port, so far as defendant knows, where infectious or contageous deseases now prevail, or are so declared by the governor, mayor, or health-officer; but defendant says that nevertheless he is, as he believes, bound regularly to visit such vessels under the law, and does so visit them, on their arrival at the port and pass of Galveston, at the quarantine station; and defendant says that
28 he is unable to see how he is to ascertain, without actual visitation, the sanitary condition of a vessel, passengers, crew, and cargoe, or from whence she has come, nor does he see how he can carry out the law and the proclamations without making such visitation.

That the law intended to require examination of all vessels arriving at the port and pass of Galveston after declaration of quarantine.

And defendant says that it is within the power of plaintiff to change the routes, places of departure, of touching en route, of any of his vessels, agreeably to his own pleasure, at any time before their departure, and that no quarantine law could be enforced, to any purpose, based upon any supposed knowledge which the health-officer might or might not have, as to the probable ports of touching or departure of any vessel arriving at the quarantine port, and that omission to visit vessels arriving from any and all ports would virtually nullify all efforts at quarantine.

29 Defendant says that the quarantine fees demanded of complainant do not amount to more than twice the sum necessary to support and enforce the most stringent quarantine regulations, and he

says that no other duties, other than the fees aforesaid, are threatened to be collected, or in any other manner than by law, of the complainant and his vessel.

Defendant says that he expects to collect all such fees as he lawfully may under such law as aforesaid, and the proclamations and authority aforesaid, until the 10th day of November next, unless restrained by order of this honorable court, or unless such quarantine is sooner raised. And defendant says that he does not doubt but that the fees incurred by complainant's vessels will amount by that time to about four or five thousand dollars, and perhaps more, as by far the larger part of the commerce, by sea, of the port of Galveston, is performed by the vessels of complainant, and from which complainant has for a long series
30 of years derived, and is now deriving, an immense revenue, and defendant does not deem that the payment of said quarantine fees or "duties," as called in the bill of complaint, are an onerous burden on commerce, but rather in aid thereof, because, he says, that this coast is easily infected with malignant fevers, and that the unexpended portion of said fees are gradually creating a fund, small, comparatively with the real wants of commerce, in aiding the same through the exigencies of epidemics, in expediting deliveries of cargoes, through the fumigation of vessels, and other means, nor is the same unjust towards the complainant, and in violation of the Constitution of the United States, so far as he is able to understand the same, and he would respectfully refer upon this subject to the annexed certified copies of orders in chancery suit No. 47, now pending in this court, which is made a part hereof and marked Exhibit D.

31 And this defendant, without questioning the propriety of the complainant's feelings, or his interest in preventing the introduction of contagious or infectious deseases into the port of Galveston, says, that as to those matters embraced in the bill of complaint expressing a willingness on the part of complainant to aid the authorities of the State of Texas, and the city of Galveston, in preventing the introduction of desease, and his perfect willingness "to submit to a fair visitation-fee and to pay the same whenever the said defendant may consider it proper to visit all or any of his said ships," or to submit to any exactions, however onerous, or remove his ships from any route of travel and trade should infectious desease prevail at any port where the same might touch or enter; he, this defendant, says that he cannot but regard such assertions and propositions as specious in the premises, and this defendant says that he knows of no mode other than that embraced in the
32 laws and proclamations aforesaid, for the caarying out of the same; that he knows of no fund or source of revenue, for such sanitary purposes, other than that provided by said law; that this defendant has no right to make any contract in the premises of and concerning said fees, or to modify the fees fixed by said law, and in addition to this, defendant says, that said complainant so far from manifesting a disposition to pay or contribute to any of the expenses aforesaid, has actually recently commenced a suit against the city of Galveston, in this honorable court, on the law side thereof, to recover the quarantine fees paid by him for and on account of his said vessels, on and between the 10th days of May and November, 1871, and each and every day between those days, alleging to have paid five thousand three hundred and forty-six dollars & ninety-one cents, and asking judgment in favor of plaintiff in the sum of ten thousand dollars & costs of
33 suit, and which suit is No. 680, C. L., and to which def't asks

leave to refer by way of rebutting, if need be, the specious pretences of complainant's bill herein.

And defendant says that previous to the filing of this suit, and said suit No. 680, C. L., that complainant had also instituted a suit in equity, for injunction, in this hon. court, against this defendant and others, wherein this complainant was also the complainant therein, which said suit is numbered No. 47, chancery, in this court, and to which reference is hereby prayed to be made, and a certified copy of the orders therein is hereto appended as aforesaid.

And defendant says that complainant sought to have the same or similar questions relative to said law adjudicated therein, and that the injunction sought was denied therein, as will appear by said copy orders.

Defendant says that complainant has never paid any quarantine fees except under protest, and that other than by said bill of complaint, complainant has never proffered a willingness to pay any visita-
34 tion or other fee in the premises.

Defendant denies that said dues and fees, exacted under pretence of enforcing said proclamations and acts of the legislature, as alleged, are grossly extortionate, unprecedented, and illegal, and that the same are an onerous burthen on commerce, or that they are in direct violation of the Constitution of the United States, so far as defendant is informed or believes; but he is advised by his counsel that these matters are questions of law, to be determined by the court, and he submits the same to the determination of the court.

And defendant, further answering, says that, as to accounting to the said complainant, *that* the only moneys collected by him of complainant were the same hereinbefore stated, and that the same were collected under and in pursuance of the authority hereinbefore stated, and that he has already fully accounted to the city of Galveston for the same, which is the only person with whom the defendant is liable to
35 account, as he verily believes, and defendant herewith attaches a copy of the laws and of the proclamations upon which the said collections are based, and makes the same a part of his answer herein, the same being marked Exhibit E.

Defendant also asks leave to refer to the records of chancery suit No. 47 aforesaid and to the decision therein, refusing complainant an injunction, and which is still binding and unreversed in this court, the same having been made by the Hon. W. B. Woods, one of the hon. the circuit judges, and which said suit is still pending, and in which the validity of the statutes aforesaid and of the right to the fees aforesaid (or so-called dues as aforesaid) was involved and determined by overruling the motion of the said complainant for an injunction, restraining the defendant from the collection allowed by the law aforesaid of
36 and from the vessels aforesaid. And defendant respectfully submits that complainant ought not to be permitted to harass this defendant with applications for injunctions in this behalf, and particularly at this period, when we are at the very threshold of the sickly or epidemic season, and thus, perhaps, embarrassing the efforts of this defendant in restraining the approach of whatever plagues, pestilence, or infections may be in the closely-approaching future.

And defendant, having answered fully, as he believes, everything in complainant's bill that he is required to make answer unto, says that if he has omitted anything that he ought to have answered, that he has

not done so from design, and that he neither admits nor denies the same; but leaves the same to be established by proof.

GEO. W. PEETE.

C. B. SABIN,
Solicitor & Counsel for Def't.

37 In U. S. circuit court for the eastern dist. of Texas, Galveston.

CHARLES MORGAN
vs.
GEORGE W. PEETE. } No. 58. In equity.

George W. Peete, defendant in the above-entitled suit, says that he has heard read the foregoing answer therein subscribed by him, and knows the contents thereof, and that as to the matters therein stated of his own knowledge, that the same are true, and that as to those matters stated upon information and belief, or belief, that he believes the same to be true.

GEO. W. PEETE.

Sworn to and subscribed before me this 15th day of June, A. D. 1872.

GEO. C. RIVES,
Clk U. S. Dist. Ct. E. D. T., G.

(Copy.)

EXHIBIT "A."

38 By virtue of authority vested in me as mayor pro tem. of the city of Galveston, I hereby appoint and constitute Dr. Geo. W. Peete as quarantine physician for the port of Galveston, to take effect on and after the 1st day of June, 1870.

Given under my hand and the seal of the city of Galveston this 21st day of May, 1870.

[L. S.] EDWARD T. AUSTIN,
Mayor pro tem.

Attest:
(Signed) R. Y. BOLLING, *Sec'y.*
(Copy.)

(Copy.)

EXHIBIT B.

UNITED STATES OF AMERICA,
State of Texas:
MAYOR'S OFFICE, CITY OF GALVESTON.

To all to whom these presents shall come:

Know ye that I, James A. McKee, mayor of the city of Galveston, by virtue of authority in me vested by board of aldermen, do hereby constitute and appoint Dr. Geo. W. Peete health-officer of the city of
39 Galveston, with official functions from and after the 10th inst.

Given under my hand and seal of said city, at the mayor's office, this 4th day of May, 1871.

(Signed) JAMES A. McKEE, *Mayor.*

(Copy.)

Attest:

(Signed) T. H. L. PAYNE, [L. S.]
City Clerk.

(Copy.)

(Copy.)

EXHIBIT C.

Having commissioned Doct. G. W. Peete quarantine officer for the port of Galveston, I hereby authorize him to make the necessary preparation for the same, placing the entire outfit entirely under his control. To this end he is authorized and directed to furnish the necessary boats, flags, men, and provide and pay the same at a monthly charge of four hundred and twenty dollars, including his own salary, and whatever else may be required to conduct the ordinary operation of the
40 same, not including, however, such charges as telegraphing, disinfectants, &c., which are contingent and dependant upon circumstances which can be neither prevented 'or foreseen.

MAY 1ST, 1870.

(Signed) EDWARD T. AUSTIN,
Mayor pro tem., Galveston City.

(Copy.)

The above-named terms of contract will be in force for the quarantine term of the year 1871.

(Signed) JAMES A. McKEE, *Mayor.*

The within contract will be in force for the present year.

(Signed) A. SOMERVILLE.
Mayor Galveston, 1872.

EXHIBIT D.

(From endorsement on petition.)

CHARLES MORGAN
vs.
GEORGE W. PEETE. } Ch. 47. In chancery.

The clerk of the circuit court will set down for hearing on Wed-
41 nesday, the 1st day of June, 1871, a motion for the hearing of an application for injunction in the above cause, up on notice served upon the defendant, Geo. W. Peete, and an order will also be issued to the said Geo. W. Peete, restraining him from collecting any further duties, dues, or fees mentioned in said bill until the hearing of the application of injunction.

MAY 27TH, 1871.

(Signed) W. B. WOODS, *Judge.*

(From the minutes.)

CHARLES MORGAN, COMPLAINANT,
vs.
GEORGE W. PEETE, DEFENDANT. } Ch. 47.

The petition and motion of the complainant herein for an injunction, this day coming on to be heard—the said complainant appearing by his counsel, *and after argument of counsel*, and the defendant by his counsel—and after argument of counsel, and the court having fully considered the said petition and motion, and, being fully advised in the premises, it is ordered that the motion for an injunction be over-
42 ruled. Whereupon the complainant, by leave of the court, takes leave to amend and make new parties.

(From the minutes.—Continued.)

CHA'S MORGAN
vs.
GEO. W. PEETE. } Ch. 47.

I, Levi Jones, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing to be true and correct copies of all orders made in the cause in chancery, entitled Cha's Morgan v. Geo. W. Peete, as the same now appear on file or of record in my office.

To certify which, witness my hand and seal of said court, at Galveston, this 13th June, 1872.

[SEAL.] LEVI JONES, *Clerk.*

43 EXHIBIT "E."

Notice of quarantine.

MAYOR'S OFFICE,
Galveston, Texas, May 1st, 1872.

Notice is hereby given that, by virtue of a proclamation of his excellency the governor of the State of Texas, and of a statute law of the State, quarantine of Galveston Pass and Port will be established from and after the 10th inst.

The quarantine anchorage is hereby fixed at a point between the inner bar and a line drawn from Fort Point across the channel to the quarantine buoy on the western side thereof.

For the information of all concerned the proclamation of his excellency the governor, together with the law regulating quarantine, is herewith published, and a strict compliance with the same will be exacted.

ALBERT SOMERVILLE, *Mayor.*

Proclamation by the governor of the State of Texas.

To all to whom these presents shall come:

I, Edmund J. Davis, governor of Texas, by virtue of authority vested in me by a law of the legislature of the State of Texas, approved June 10, 1870, entitled "An act authorizing quarantine on the coast of Texas,

and elsewhere within the State," do hereby declare quarantine on the coast of Texas, and direct the authorities of every corporate town on the coast to carry out the provisions of said act.

Quarantine to extend to all vessels sailing from or touching at any sea-port or coast south of north latitude 25 degrees, to wit, the western coast of Africa, the West India islands, the eastern coast of South America, of Central America and of Mexico, and from Key West, Florida.

It is further directed that the health-officers at the respective ports shall, as soon as they are reliably informed of the existence of infectious or contagious diseases at any other port, city, town, or village, not herein specially included, within this State or out of it, declare vessels arriving from such places subject to quarantine and to all regulations established for the enforcement of same.

This quarantine to commence on the tenth day of May, and to continue until the tenth day of November next, unless sooner suspended.

Vessels sailing from or touching at any port or any coast above mentioned, and entering any port on the coast of Texas, during the continuance of quarantine of such port, if free from disease, shall be detained ten days, and such other time as will complete a term of twenty-five days since such vessel left the infected port, and if no disease appears, shall then be allowed to pass. Vessels upon which contagious or infectious diseases appear shall be detained for twenty-five days after all disease has disappeared from such vessel or vessels, and then allowed to pass.

Health-officers are directed also to provide and enforce such regulations as will prevent all communication with vessels in quarantine. These officers will also provide for the thorough disinfection of all vessels on which there has been any contagious or infectious disease before they are allowed to leave quarantine; all expenses necessary to such disinfection to be paid by the vessel.

Quarantine stations for the enforcement of this proclamation are hereby established at Sabine Pass, Galveston Pass, Pass Caballo, Aransas Pass, and Brazos Santiago. The quarantine stations shall be established by the proper health-officer at each of these passes, as near the outer bar as possible, looking to the safety of vessels lying at anchor, and convenience in boarding same.

The health-officer of Brazos Santiago shall also supervise vessels entering at the mouth of the Rio Grande.

The health-officer to be appointed by the corporate authorities of Galveston is charged with the enforcement of this proclamation at Galveston Pass; the one to be appointed at Indianola, for Pass Caballo; Dr. P. B. Turpin, at Aransas Pass; Dr. J. M. Main, at Brazos Santiago and the mouth of the Rio Grande; and the one to be appointed at Sabine City, for Sabine Pass.

The county authorities of the counties on the Rio Grande are authorized and directed, until this quarantine is suspended, to establish such regulations as will prevent the importation of disease into this State by land.

The authorities of all sea-port towns are referred to chapters four and fifty-five of the general laws of 1870 for such other information as they may require for their guidance.

In testimony whereof I have hereunto set my hand and caused the great seal of the State to be affixed, at the city of Austin, this fourth

day of April, A. D. 1872, and of the Independence of the United States of America the ninety-sixth, and Texas the thirty-seventh.

[L. S.] EDMUND J. DAVIS,
Governor of Texas.

By the Governor:
JAMES P. NEWCOMBE,
Secretary of State.

An act authorizing quarantine on the coast of Texas and elsewhere within the State.

SECTION 1. *Be it enacted by the legislature of the State of Texas*, That the governor is hereby authorized and empowered to issue his proclamation declaring quarantine on the coast of Texas whenever in his judgment it shall be necessary, and for such length of time as he may decide to be essential, to prevent the introduction of any infectious or contagious disease.

SEC. 2. It is hereby made the duty of the corporate authorities of each and every town or city upon the coast of Texas, at as early a moment as practicable after the promulgation of the proclamation of the governor, as in section one provided, to establish a quarantine station at a sufficient distance from the usual place of landing of vessels at their respective towns and cities, and to appoint, select, and employ a competent and good physician as the health-officer at such station, and to furnish said officer with all things necessary for the proper and efficient discharge of his duties; and said town or city corporation shall have power to provide for quarantine, and to enforce the same by ordinance.

SEC. 3. It shall be the duty of said health-officer to stop every vessel from an infected port or district, and to make a rigid examination of the said vessel, notwithstanding the said vessel may have a clean bill of health; and if deemed necessary to, (and he is hereby empowered so to do,) to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port.

And the said health-officer shall detain said vessel at quarantine for such length of time as may be designated by the governor in his proclamation establishing said quarantine; and he may use force, if necessary, in order to discharge the duties imposed upon him by this act. Wherever on the coast of Texas there shall be no town or city corporation, and quarantine be there required, the governor shall have power to appoint a health-officer, and to prescribe such regulations for the quarantine of such places as he may deem necessary.

An act to amend an act entitled "An act authorizing quarantine on the coast of Texas and elsewhere within the State," approved June 10, 1870.

SECTION 1. *Be it enacted by the legislature of the State of Texas*, That section four of an act entitled "An act authorizing quarantine on the coast of Texas and elsewhere within the State," approved June 10, 1870, be, and the same is hereby, amended so as to read as follows, to wit:

SEC. 4. *Be it further enacted*, That any vessel arriving at quarantine stations, designated by the authorities aforesaid, from an infected port, without a clean bill of health from the proper officer of said port, shall be taken possession of by the health officer at the station at which such

vessel arrives, and the master thereof shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five hundred nor more than five thousand dollars, and the said vessel shall be held by the health-officer until said fine and costs are paid, or said vessel replevied; provided that the payment of the fine which may be assessed against the master of said vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rule shall apply, and shall be observed, as in cases of other vessels; and in order to speedy trial and adjudication of all cases arising under the fourth and sixth sections of this act, the mayor of each town or city shall have concurrent jurisdiction with the district court of this State.

SEC. 5. That each and every master of a vessel that passes, or attempts to pass, said quarantine station, without first having permission from the health-officer so to do, shall be deemed guilty of felony, and, on conviction thereof before the district court of this State, shall be imprisoned in the penitentiary for any term not less than one year nor more than five years, or fined in any sum not less than five hundred nor more than ten thousand dollars.

SEC. 6. Any person belonging to a vessel, when placed under quarantine, who shall go ashore without the written permission of the health-officer at that station, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars for each and every offence; and any master or officer of said vessel, or other person, who shall land or permit to be landed any goods, wares, or merchandise whatever from said vessel, while under quarantine, without the written permission of the health-officer aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than fifty nor more than one thousand dollars for each and every article of goods, wares, or merchandise so landed.

SEC. 7. There shall be collected by the examining health-officer, from every vessel arriving at each and every quarantine station, the following fees, to wit:

For every vessel of one hundred tons burden or under, the sum of five dollars; from every vessel over one hundred tons burden, the sum of five dollars, and, also, a further fee of one and one-half cents for each and every ton. The aforesaid fees, collected as aforesaid, shall be reported to the corporate authorities of the town or city at which such quarantine is established, and all the fees and fines, as hereinbefore provided for, shall be used to defray the expenses of keeping said quarantine.

SEC. 8. It shall be the duty of the town or city authorities aforesaid, as soon as the quarantine ceases to exist, to make a succinct statement of receipts and expenditures, and forward the same to the comptroller of the State; and, should the expenditures amount to a greater sum than the receipts, they shall draw from the treasury of the State, upon an order from the comptroller, the excess of such expenditures over the receipts, as in other cases made and provided; and should the receipts exceed the expenditures, the aforesaid town or city authorities are hereby authorized and empowered to appropriate and use such excess for the maintenance of marine hospitals in their respective towns or cities; provided that nothing herein contained shall prevent any town or city in the State from establishing a quarantine which they may think necessary for the preservation of the health of said town or city, not applicable to the provisions of this act.

Approved August 13, 1870.

44 *Opinion of court.—Filed June 15th, 1872.*

GALVESTON, *June* 15, '72.

CHARLES MORGAN } On bill for injunction.
v.
GEORGE W. PEETE. }

In this case we think that the charge which by act of the legislature is authorized to be exacted from all vessels coming to the quarantine ground, namely, $5 for the first one hundred tons, and one and a half cents for every additional ton, is a "duty of tonnage" within the meaning of the Constitution; and that it is, also, an unconstitutional tax upon the commerce of the port. The States have a right to establish quarantine regulations for the preservation of the public health, but they have no right to place toll-gatherers at the gateways of commerce, and lay indiscriminate exactions upon all vessels that enter thereby. We think, therefore, that the tax, duty, or fee which is complained of is unauthorized and void. And whilst the complainant might, by
45 successive actions at law, recover the amount exacted, this court, as a court of equity, in order to prevent a multiplicity of suits, has a right to entertain a bill for an injunction. We therefore grant the injunction as prayed, with liberty to the complainant to enter a final decree for a perpetual injunction, if he elects to accept the answer without replying thereto, unless the defendant desires the usual time for final hearing.

Decree.—From the minutes May term, June 15th, 1872.

CHARLES MORGAN, COMPL'T, } No. 58. In eq.
against
GEORGE W. PEETE, DEFENDANT. }

And this case coming on to be heard upon the application of complainant for an injunction, and notice having been given, and defendant having fully answered the bill of complaint, and the complainant having accepted the answer of defendant without replying thereto, and
46 the defendant not desiring to make further answer or to extend the time for hearing the same, and the said cause being heard upon bill, answer, & exhibits, and the same being argued by counsel, and being fully considered, it is ordered as follows: That the injunction as prayed for in said bill be granted and made perpetual, so far that the defendant be restrained from collecting any fees or dues from the complainant, his captains, pursers, or agents, (on account of any of his steamships entering or touching at the port of Galveston,) by virtue or authority of the proclamation of the governor of the State of Texas, issued on the 4th of April, 1872, or by authority of the acts of the legislature of the State of Texas, entitled An act to establish quarantine on the coast of Texas, and an amendment thereto, approved June 10, 1870, & August 13th, 1870, respectively; and it is further ordered, adjudged, and decreed, that the complainant recover his costs, and that execution as at
47 law issue therefor. And the defendant having given notice of appeal to the next term of the Supreme Court of the United States, the amount of the bond is fixed at five hundred dollars, to be executed and conditioned according to law.

Appeal bond.—Filed June 21st, 1872.

Supreme Court of the United States.

GEORGE W. PEETE, APPELLANT,
vs.
CHARLES MORGAN, APPELLEE.
} In equity. In error on appeal.

Know all men by these presents that we, George W. Peete, as principal, and C. M. Etheredge and J. N. Camp, as security, are held and firmly bound unto Charles Morgan in the sum of five hundred dollars, to be paid to the said Charles Morgan, his executors or administrators; to which payment, well and truly to be made, we bind ourselves,
48 and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 19th day of June, A. D. 1872.

Whereas the above-named George W. Peete hath prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Texas, sitting in Galveston, in equity, and wherein the said Charles Morgan was complainant or plaintiff therein, and the said George W. Peete was defendant, the same being No. 58, in equity, on said circuit court docket:

Now, therefore, the condition of this obligation is such, that if the above-bounden George W. Peete shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEO. W. PEETE. [SEAL.]
C. M. ETHEREDGE. [SEAL.]
JOHN N. CAMP. [SEAL.]

Sealed and delivered in the presence of—
C. B. SABIN.
R. D. JOHNSON.

49 UNITED STATES OF AMERICA,
State of Texas, County of Galveston:

Be it remembered, that on this 20th day of June, A. D. one thousand eight hundred and seventy-two, before me, R. D. Johnson, a notary public in and for the city and county of Galveston, duly commissioned and sworn, personally appeared Geo. W. Peete, C. M. Etheridge & John N. Camp, to me known, who severally acknowledged that they had executed the annexed instrument of writing, bearing date the 19th day of June, A. D. 1872, for the purposes and considerations therein expressed.

In testimony whereof I have hereunto subscribed my name and affixed the impress of my official seal at my office in the city of Galveston, the day and year above written.

[SEAL.]

R. D. JOHNSON,
Notary Public for Galveston County, Texas.

I approve of the goodness and sufficiency of the security of the within bond.

June 21st, 1872.

AMOS MORRILL,
Dist. Judge.

50 *Writ of injunction.—Issued July 23d, 1872.*

In the circuit court of the United States for the eastern district of Texas.

BETWEEN CHARLES MORGAN, COMPLAINANT, *and* GEO. W. PEETE, DEFENDANT. } No. 58. In chancery.

The President of the United States of America to Geo. W. Peete, greeting:

Whereas the said court, on the 15th day of June, 1872, made its order and decree in the above entitled and numbered cause, as follows, to wit:

"And this case coming on to be heard upon the application of complainant for an injunction, and notice having been given, and defendant having fully answered the bill of complaint, and the complainant having accepted the answer of defendant without replying thereto, and the defendant not desiring to make further answer or to extend the time for hearing the same, and the said cause being heard upon bill, answer,

51 and exhibits, and the same being argued by counsel, and being fully considered, it is ordered as follows: That the injunction as prayed for in said bill be granted and made perpetual, so far that the defendant be restrained from collecting any fees or dues from the complainant, his captains, pursers, or agents, (on account of any of his steamships entering or touching at the port of Galveston,) by virtue or authority of the proclamation of the governor of the State of Texas, issued on the 4th of April, 1872, or by authority of the acts of the legislature of the State of Texas, entitled 'An act to establish quarantine on the coast of Texas,' and an amendment thereto, approved June 10th, 1870, & August 13th, 1870, respectively; and it is further ordered, adjudged, and decreed that the complainant recover his costs, and that execution as at law issue therefor; and the defendant having given notice of appeal to the next term of the Supreme Court of the United States, the amount of the bond is fixed at five hundred dollars, to be executed and conditioned according to law."

Wherefore in obedience to said order, you are hereby enjoined

52 and restrained from proceeding under said acts and proclamations in demanding or exacting from said complainant, his captains, pursers, or agents, any duties, taxes, or fees on account of the steamships of the said complainant, touching any of the matters in question; the said steamships being enumerated in the bill of complaint as follows: The "W. G. Hewes," the "Morgan," the "St. Mary," the "Agnes," the "Harlan," the Hutchinson," the "Austin," the "Clinton," the "Josephine," the "Whitney," the "City of Norfolk," the "Alabama," and the "Matagorda."

Herein fail not at your peril.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof for said district, at the city of Galveston, on this the 23d day of July, 1872.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, East. Dist. Texas, at Galveston.

53 The marshal of the eastern district of Texas will execute this writ by delivering the accompanying certified copy thereof to the said defendant, Geo. W. Peete, personally, and by showing to him this original writ, with the seal of the court thereto affixed.

Attest: C. DART, *Clerk.*

Marshal's return.

I hereby certify that I have executed this writ on the 24th day of July, 1872, as I am within commanded, by delivering to Geo. W. Peete, in person, the accompanying copy of the writ, and showing him the original writ with the seal of the court.

W'M E. PARKER,
U. S. Marshal E. D. T.
By W. T. CLAYTON, *Deputy.*

Endorsed on foregoing writ thus: "Returned and filed Aug. 1st, 1872. C. Dart, cl'k."

54 UNITED STATES OF AMERICA,
Eastern District of Texas:

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing fifty-three (53) pages of writing to contain a true and correct copy of all the records and proceedings in the cause lately pending in said court, entitled Charles Morgan, complainant, against George W. Peete, defendant, and numbered 58 on the equity docket of said court, as the same now appears on file and of record in my office respectively.

To certify which, witness my hand and seal of said court at Galveston, August 26th, A. D. 1872.

[SEAL.]

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

(Indorsement on cover:) No. 248. George W. Peete, appellant, vs. Charles Morgan. E. Texas, C. C. U. S. Filed 13th November, 1872.

O

Supreme Court of the United States.

GEORGE W. PEETE
v.
CHARLES MORGAN.
No. 248.

Brief of P. PHILLIPS,

for Appellee.

S. & R. O. POLKINHORN, PRINTERS, D ST. NEAR SEVENTH.

Supreme Court of the United States.

GEORGE W. PEETE
v.
CHARLES MORGAN.
No. 248.

Brief of P. PHILLIPS,

for Appellee.

By the 7th and 8th sections of the act of the State of Texas, approved 13 August, 1870, it is provided that every vessel arriving at the quarantine station shall pay $5 for the first hundred tons, and one and-a half cents for each ton.

It is further provided that if the tax thus collected by the city exceeds the cost of keeping up the quarantine, the surplus is to be devoted to the erection of marine hospitals.

Charles Morgan is the owner of two lines of steamers, one running from New Orleans by the way of Galveston to the port of Indianola in the State of Texas, and the other from Brashear in the State of Louisiana, by the port of Sabine in the State of Texas, and back to Brashear.

Mr. Morgan is a citizen of New York and all these vessels are there registered and enrolled.

The bill shows that the sum exacted from Morgan

amounts to $1,000 per month. The court below perpetuated the injunction, and Peete, the health officer, brings the case here on appeal from this decree.

The questions then presented are:

First. Can the State tax vessels owned in foreign ports and entering her harbors in the pursuit of commerce in order to defray the expenses of her quarantine regulations?

Second. If she can, is a tonnage tax for this purpose constitutional.

As to the first we admit that the regulation of quarantine is within the *police* powers of the State, or, to speak more accurately, within the *reserved* powers of the State.

In speaking of inspection laws, this court say: "they form a portion of that immense mass of legislation which embraces everything within the territory of a State, not surrendered to the general government, all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description as well as laws for regulating the internal commerce of a State, and those which respect turnpikes, roads, ferries, &c., are "component parts of this mass."

Gibbons v. Ogden, 9 Wheat., 203.

These regulations may properly operate on vessels engaged in commerce, and may produce delay or inconvenience, and still be constitutional when not opposed to any act of Congress on the subject. We further admit, that if any vessel violates such regulations, she may be subjected to a penalty for so doing. If contrary to such regulations a vessel should bring in an infectious disease she may be disinfected, and this at her expense.

We deny, however, that all vessels arriving at a port

and conforming to regulations can be taxed, to defray the expenses of a quarantine established for the benefit of the inhabitants of such port.

The power to establish quarantine differs in no wise from the power to institute a system of common schools or any other which the State is authorized to exercise for the welfare of its citizens. For all these purposes the State may tax its citizens or the property of other citizens rightfully within its jurisdiction.

But Mr. Morgan was not a citizen of the State, nor were his vessels within the taxing power of the State.

Morgan v. Parham 16. Wall, 472.

These quarantine regulations may cover a very large field—they may require the streets of a city to be daily washed, its houses to be fumigated, hospitals to be established, physicians to be employed. On what ground of justice, and on what constitutional principle, should the citizens of other States be taxed for this purpose? The State owes protection to its citizens, but in the fulfilment of this obligation, it cannot shift the burthen from its own shoulders, to those of foreign citizens.

Further, if the power to tax for quarantine purposes be admitted, then the power is an unlimited one. The State may, in its discretion, fix any amount, and require, as is done in this act, that the surplus shall be appropriated to the establishment of such institutions as she may think needful.

These quarantine regulations so directly interferred with the regulation of commerce, as to induce a correspondence between Governor Jay and the President, in 1795. The yellow fever made its first appearance in Philadelphia, in 1793. In 1795, it raged with violence in New York. This correspondence led to the act of Congress, 27 May, 1796, (1 Stat., 474,) which authorized

the President to direct the revenue officers, and officers commanding forts and revenue cutters to and in the execution of quarantine and health laws of the State.

619

The yellow fever was again violent in New York, in 1798, and on the 22 February, 1799, (1 Stat., 610,) Congress passed a more extended act to meet all the requirements of a proper enforcement of quaratines regulations. This provided that "the quaratines and other restraints" should be duly observed by its collectors and other officers, who were also required to and in their execution. The Secretary was also authorized where vessels were subject to quarantine to prolong the term limited for entry, and to vary or dispense with any other regulations applicable to such ports or entries.

So far, Congress was willing that commerce should be affected by State regulations for quaratine, but mindful that such acquiescence might be held to admit the right of the State to tax commerce for this purpose, it annexed this proviso—"that nothing herein shall enable any State to collect a duty of *tonnage* or *impost*, without the consent of the Congress of the United States thereto."

This is a regulation of the subject by Congress, which excludes the power of the State to tax, if it possessed it prior to the act; the words "tonnage" and "impost," cover the vessel and her cargo.

But we consider this question decided by the Passenger cases, 7 How., 283.

The statute of New York provided, that the health commissioner should collect from the master of every foreign vessel $1.50; for every steerage passenger, $1.50; and for every coasting vessel 25 cents, to be denominated "hospital money," for the use of the marine hospital. If the collections exceeded the expenses of the trust, they were to be paid over to the "society for the reformation of juvenile delinquents"

These cases were most elaborately discussed and considered, and the statute held to be unconstitutional.

As to the second question, assuming the right of the State to tax, the power could not be exercised in the form of a tonnage tax.

This was expressly decided in Cox v. Collector, 12 Wall, 205.

In this case the act of Alabama, levied a tax at so much per ton on all steamboats. The boats on which the tax was levied, were owned by citizens of the State, and were employed exclusively in the internal commerce of the State, over which Congress has no control.

The court admitted the full power of the State to tax to any amount, but held that the inhibition in the federal constitution prevented the State from taxing in this made.

We, therefore, submit, that on both questions, the law is with the appellee, and the decree must be affirmed.

P. PHILLIPS,
For Appellee.

12 Wallace 218—

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~452~~ 234

THE DUBUQUE AND SIOUX CITY RAILROAD COMPANY AND THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

ALFRED W. RICHMOND AND JOHN JACKSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED NOVEMBER 6, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 452.

THE DUBUQUE AND SIOUX CITY RAILROAD COMPANY AND THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

ALFRED W. RICHMOND AND JOHN JACKSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Answer	14, 17	7, 8
Answer	38	17
Answer	40	17
Appeal, notice of	52	23
Bond	106	45
Contract (Exhibit "A")	6	3
Contract, supplemental (Exhibit "B")	8	4
Citation	111	47
Clerk's certificate	114	48
Decree of district court	22	10
Demurrer to supplemental petition	27	12
Demurrer to supplemental petition	37	16
Evidence of J. F. Tucker	53	23
O. McLaughlin	62	27
A. W. Richmond	69	30
W. F. Blake	80	34
Geo. Young	95	41
Lease (Exhibit "C")	9	4
Motion to strike redundant matter	35	15
for judgment by defendants	36	15
to dismiss supplemental petition	36	15
to transfer to law side of the court	41	18
to strike motion from the files	42	18
Opinion of district court	48	21
Petition	1	1
Petition, supplemental	24	10

	Original.	Print.
Petition, supplemental, substitute for	29	12
Petition for writ of error	105	44
Record entry of district court	43	19
Record entry of supreme court	102	43
Writ of error	109	47

a ALFRED W. RICHMOND AND JOHN JACKSON
vs.
THE DUBUQUE & SIOUX CITY R'Y CO. AND the Illinois Central R'y Co.

Be it remembered that, on the 18th day of April, A. D. 1871, there was filed in the office of the clerk of the supreme court of Iowa, a transcript, as follows, to wit:

1 RECORD.

In supreme court, April term, 1871. In equity.

ALFRED W. RICHMOND AND JOHN JACKSON
vs.
DUBUQUE AND SIOUX CITY R. R. CO. AND Illinois Central R. R. Co.

Appeal from Dubuque district court.

On 23d day of January, 1868, plaintiffs filed their petition as follows:

In district court, Dubuque County, Iowa, February term, 1868.

ALFRED W. RICHMOND, JOHN JACKSON, PLAINTIFFS,
vs.
THE DUBUQUE AND SIOUX CITY R. R. CO. AND the Illinois Central R. R. Co., defendants. } Record.

To the district court of Dubuque County, Iowa:

Plaintiffs aver that, by a written contract dated, to wit, the 22d day of August, A. D. 1860, the defendant The Dubuque and Sioux City Railroad Company, a corporation duly incorporated under the laws of Iowa, leased to the Dubuque Elevator, a corporation duly incorporated under the laws of said State, a piece of ground on the depot lands of said railroad company, in the city of Dubuque, for the space of
2 fifteen years from said date, for the erection of a grain-elevator building by said Elevator Company, suitable for receiving, storing, delivering, and handling all grain that shall be received by the cars of said railroad company not otherwise consigned; said piece of ground to be mutually selected by both of said companies; (a copy of said written contract is hereto annexed, marked "Exhibit A," and made part hereof;) that, in pursuance of said contract, said companies selected said piece of ground, and on the piece of ground thus selected, the said Elevator Company, at great cost and expense, erected and maintained an elevator building, suitable for the purposes aforesaid; that, thereafter, in the month of January, A. D. 1861, by way of supplement to said written contract, and in consideration that said Dubuque Elevator would receive and discharge for the said Dubuque and Sioux City Railroad Company all through-grain at one cent a bushel, and make no charge for storage unless the grain should remain in store more than ten days, it was further agreed in writing, that said Dubuque Elevator should have the handling of all through-grain, that is, of all grain shipped from any point on said railroad through to its terminus at Dubuque, and that

said railroad company should pay the said Dubuque Elevator one cent a bushel for the receiving and discharging thereof; (a copy of said supplementary contract is hereto annexed, marked "Exhibit B," and made part hereof.)

3 And plaintiffs further aver that the said Dubuque Elevator corporation as aforesaid, continued in the possession of the said elevator building and premises aforesaid and maintained the same, and fully and duly performed everything to be done by their said contract and supplemental contract until, to wit, the 30th day of January, A. D. 1862, when the said The Dubuque Elevator, by proper assurances in writing, bargained, sold, transferred, and conveyed unto one Dean Richmond, said elevator building and premises, and all their right, title, and interest in and to the same, and in and to said contracts, to which sale, transfer, and conveyance the said Dubuque and Sioux City Railroad Company then consented; that thereupon said Dean Richmond entered into the possession of said elevator building and premises, and fully and duly performed everything to be done and performed by the said The Dubuque Elevator, under said contracts until, to wit, the day of A. D. 186 , when he died, testate, and by his will, after giving sundry pecuniary legacies, devised and bequeathed all and singular, the residue and remainder of his property, including the said elevator building and premises, and all rights under the contracts aforesaid, to his widow, Mary E. Richmond; that thereupon she entered into the possession of said elevator building and premises and did and performed everything to be done and performed by her, as the representative of said The Dubuque Elevator, under the

4 contracts aforesaid, until, to wit, the fifth day of December, A. D 1866, when, by proper assurances, she transferred and conveyed to the plaintiff Alfred W. Richmond, five-eight's, and to the plaintiff John Jackson, three-eight's interest in said elevator building and premises, and the contracts aforesaid; that thereupon the plaintiffs entered into the possession thereof, and still remain therein, and have done and performed everything to be done and performed by the said The Dubuque Elevator, under said contracts, and have been at all times, and are now, ready and willing to perform and discharge whatever duties and obligations rest on them under said contracts, as the representatives of the said The Dubuque Elevator. And plaintiffs further aver that, on, to wit, the 13th day of September, A. D. 1867, the said Dubuque and Sioux City Railroad Company entered into a written contract with the other defendant, the Illinois Central Railroad Company, a corporation, in which it was agreed that said Dubuque and Sioux City Railroad Company should lease to the said Illinois Central Railroad Company said Dubuque and Sioux City Railroad, for the term of twenty years from said date, and that said Illinois Central Railroad Company should assume the contracts made by said Dubuque and Sioux City Railroad Company with the said Dubuque Elevator Company as aforesaid; a copy of said contract between said railroad companies is hereto annexed, marked "Exhibit C," and made a part hereof; that, on the 1st day of October, A. D. 1867, as provided

5 in said last-mentioned contract, the said Illinois Central Railroad Company took possession of the said Dubuque and Sioux City Railroad, and of all its property, and under said contract, have since exclusively operated the same. And your petitioners further aver that, since the first day of October, A. D. 1867, when the said Illinois Central Railroad Company entered into the possession of said Dubuque and Sioux City Railroad, and commenced operating the same under the contract last above-mentioned, large quantities of through-grain have been

received by the said Illinois Central Railroad Company at points on the said Dubuque and Sioux City Railroad west of said city of Dubuque, for transportation along and over said railroad, through to its terminus at Dubuque, and thence to other points beyond said terminus, without permitting plaintiffs to have the handling of the same at their elevator, or paying them one cent per bushel thereon, as provided in the contracts aforementioned; that the through-grain thus received and transported in violation of said contracts, since said 1st day of October, A. D. 1867, amounted to twelve hundred thousand bushels; that the said defendants, the said railroad companies, have failed and refused to permit the plaintiffs to have the handling of the same at their said elevator, but have prevented them from so doing, and have refused to pay them said one cent per bushel thereof; whereby they have lost the said contract price of one cent per bushel on said grain for
6 the handling thereof, and also the storage thereof for the space of thirty days, to the damage of plaintiffs, twenty thousand dollars. Wherefore they bring their suit.

GRIFFITH AND KNIGHT AND
PLATT SMITH,
Attorneys for Plaintiffs.

EXHIBIT A.—*Contract between the D. and S. C. R. R. Co., and the Dubuque Elevator, made August* 22, 1860.

Said railroad company lease to the Dubuque Elevator, in consideration of the covenants and agreements hereinafter set forth, a piece of ground for the erection of a grain elevator and grain store-house, for the term of fifteen years from the date hereof.

Said land is to be mutually selected by the parties hereto, on the depot lands of said railroad company in Dububue and to be sixty-five feet square or thereabouts, but liable to be increased in case the business of the country warrants it, as hereinafter mentioned.

The Dubuque Elevator shall have the exclusive possession of said land so long as they comply with the terms of this lease.

The Dubuque Elevator covenant and agree:

1st. That they will erect a building suitable for receiving, storing, delivering and handling all grains that shall be received by the
7 cars of said railroad company, not otherwise consigned; and that they will, from time to time, make such additions thereto as the amount of the business to be done may require.

2nd. That they will pay said railroad company the yearly rent of five dollars.

3rd. That they will not charge for receiving, storing, delivering, and handling grain, higher rates than are charged in the same business at Chicago, Illinois; but the business shall be conducted upon the same terms as may be usually charged at Chicago from time to time.

4th. That, at the expiration of fifteen years, *to* Dubuque Elevator will, at the option of said railroad company, accept of and enter into a renewal of this for another fifteen years exactly on the same terms as this lease, or accept in full payment for their buildings, machinery, and property necessary for the receiving, storage, delivery, and handling of grain, and the conducting of such business, the amount for which the same, by an appraisal, may be ascertained to be worth.

The Dubuque and Sioux City Railroad Company covenant and agree to maintain the Dubuque Elevator in the peaceable possession of said premises so long as they abide by and perform the covenants of this

lease; and further covenant that they will not erect a similar building, namely, a building for the receiving, storing, delivering, and handling of grain, in the city of Dubuque; and further covenant that
8 they will not grant or lease to any other party or parties during the lease, the right to erect any such building in Dubuque.

And it is understood and agreed that this instrument is entered into by said parties in their own behalf and in behalf of their legal representatives, respectively, and binding on them and their legal representatives as fully and effectually as if expressly so written in the covenanting clauses.

Witness the hands of the officers of the companies and the corporate seal.

HERM. GELPEKE, *President.*
JNO. R. THORNE, *President.*
JAMES M. McKINLAY,
Sec'y D. and S. C. R. R. Co.

EXHIBIT B.—*Supplement.*

The Dubuque Elevator agree to receive and discharge for the Dubuque and Sioux City Railroad Company all through-grain at one cent a bushel, and shall make no charge for storage, unless the grain is in store more than ten days. In case the grain is held in store for the railroad company for more than ten days, the Dubuque Elevator shall have one cent a bushel for the first ten days (or fraction of ten days) following the ten days without charge, and shall have one-half cent a bushel for every additional ten days or fraction of ten days.

9 And the Dubuque and Sioux City Railroad Company agree that the Dubuque Elevator shall have the handling of all through-grain, and agree to pay the Dubuque Elevator one cent a bushel for receiving and discharging thereof as aforesaid; and agree to pay for storage as aforesaid, when the same exceeds ten days.

This agreement to continue until the expiration of the contract to which it is supplementary.

Witness the hands of the officers of the companies and the corporate seal of the Dubuque and Sioux City Railroad Company.

HERM. GELPEKE, *President.*
JNO. R. THORNE, *President.*
JAMES M. McKINLAY,
Sec'y D. and S. C. R. R. Co.

JANUARY, 1861.

EXHIBIT C.—*Lease of the Dubuque and Sioux City Railroad to the Illinois Central Railroad Company.*

This lease made and entered into upon this thirteenth day of September, in the year of our Lord one thousand eight hundred and sixty-seven, between the Dubuque and Sioux City Railroad Company, of the State of Iowa, of the first part, and the Illinois Central Railroad
10 Company, of Illinois, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, has let and leased, and by these presents does let and lease unto said party of the second part, for and during the term of twenty years, commencing upon the 1st day of October, A. D. 1867, the Dubuque and Sioux City Railroad, including tracks, depots, right of way, bridges, turn-tables,

side-tracks, switches, water-tanks, depot-grounds, as now occupied, cars, engines, locomotives, warehouses, elevators, and all other things, real or personal, used or to be used in and about the operation of said railway, and everything pertaining thereto, together with the full power to build, maintain, and operate the said railway as fully as the said party of the first part can or may do, to have and hold the same unto said party of the second part for and during said term of twenty years. * * * *

It is further agreed that the party of the second part shall assume the lease made by the party of the first part with the Cedar Falls and Minnesota Railroad Company, a copy of which is hereto appended, marked A. Also the contract made by said party of the first part with the Dubuque Elevator Company, a copy of which is hereto appended, marked B.

11 On the 23d day of January, 1868, plaintiffs filed their application for injunction as follows:

In district court Dubuque County, Iowa, February term, 1868.

ALFRED W. RICHMOND AND JOHN JACKSON
vs.
THE DUBUQUE AND SIOUX CITY RAILROAD Company and The Illinois Central R. R. Company.

To the district court of Dubuque County, Iowa:

Plaintiffs represent that they have brought their action by ordinary proceeding to the February term, 1868, of this court, against the above-named defendants, to recover their damages for the breach of certain contracts therein mentioned and set forth, as by reference to their petition on file will more fully and at large appear, which action they allege they are entitle' to maintain.

And plaintiffs further represent that the defendant, since the commencement of said action, have continued to violate the contracts therein mentioned and set forth as Exhibits "A" and "B," and still continue to violate the same; that, since the commencement of said action, the defendants have received and transported over and along the line of the said Dubuque and Sioux City Railroad to the said terminus at Dubuque, large quantities of through-grain, which they have prevented the plaintiffs from having the handling of at their elevator at Dubuque, as is provided by said contracts, and are continuing

12 daily so to receive and transport such through-grain to and beyond said city of Dubuque, without permitting or allowing the plaintiffs to have the handling thereof, in the manner aforesaid and as provided by said contracts, and for which the defendants refuse to pay the plaintiffs the price mentioned in said contracts, or any part thereof. And plaintiffs say that, were they permitted by the defendants to have the handling of such through-grain, as provided by said contracts, large quantities thereof would remain in store in plaintiffs' said elevator for a longer period than ten days, to the benefit of plaintiffs, under the provisions of said contracts; that, in consequence of the repeated and continued violations of said contracts by the defendants, as aforesaid, the plaintiffs are unable to ascertain the amount of through-grain received and transported as aforesaid by the defendants, but the same rests peculiarly and exclusively in the knowledge of the defendants, and that they refuse to disclose the same, and plaintiffs have no means by which

they will be enabled to ascertain the amount of such through-grain that defendants may in future receive and transport as aforesaid, in violations of said contracts. And plaintiffs further say that, in consequence of defendants' violations of said contracts, as aforesaid, the plaintiffs are, and will be as long as such violations are continued, unable to
13 ascertain the amount of such through-grain that would continue in store in their said elevator for a longer period than ten days, to their benefit and advantage, under the terms of said contracts, or the length of time that such through-grain would remain in store. And plaintiffs say that they are, and have been at all times, ready and willing to handle such through-grain at their said elevator as provided by said contracts, and in all things to comply with the terms of said contracts; that, in order to be thus ready at all times to handle such through-grain as by the terms of said contracts they are required, they are obliged to keep and maintain a large force of hands, and are put to great cost and expense; that great loss and irreparable damage is being done them by the continued violation of said contracts as aforesaid, and that they have no complete and adequate remedy without the interposition of the court by the writ of injunction: Wherefore, the plaintiffs pray that the writ of injunction issue, restraining and enjoying the defendants, their employees, agents, and servants, and all persons acting through or under them, or either of them, from delivering or transferring otherwise than through the plaintiffs' elevator at Dubuque, any through-grain brought by the said defendants, or either of them, along the line of the said Dubuque and Sioux City Railroad to said city of Dubuque, and that such writ of injunction be made
14 perpetual during the life of said contracts.

GRIFFITH AND KNIGHT AND
PLATT SMITH,
Attorneys for Plaintiffs.

STATE OF IOWA,
Dubuque County, ss:

I, Richard Scott, of said county, being duly sworn, say that I am book-keeper, clerk, and agent of the plaintiffs, Alfred W. Richmond and John Jackson; that both of said plaintiffs are now absent in the State of New York; that the contracts above-mentioned are in my possession; that I am general superintendent and manager of the plaintiffs' business at said elevator, and have personal knowledge of the matters and things stated in the foregoing petition; and that the same are true, as I verily believe.

RICHARD SCOTT.

Signed by Richard Scott in my presence, and by him sworn to before me this 23d day of January, 1868.

Witness my hand and notarial seal.

[SEAL.]

J. M. GRIFFITH,
Notary Public of Dubuque Co., Iowa.

On the 18th day of March, 1868, the defendant filed his answer as follows:

District court, Dubuque County.

A. W. RICHMOND ET AL.
vs.
THE DUBUQUE AND SIOUX CITY R. R. CO. ET AL.

15 The Dubuque and Sioux City Railroad Company, one of the defendants in the above-entitled action, for answer and defence

to plaintiffs' petition, denies each and every allegation in said petitioned contained.

ALLISON, CRANE AND ROOD,
Defendant Dubuque and Sioux City R. R. Co., Attorenys.

On the 18th day of March, 1868, the defendant filed his answer, as follows:

Answer.

District court, Dubuque County.

A. W. RICHMOND ET AL.
vs.
THE ILLINOIS CENTRAL R. R. CO. ET AL.

The Illinois Central Railroad Company, one of the defendants in the above-entitled action, for answer and defence to plaintiffs' petition herein, denies each and every allegation in said petition contained.

Second. For a second answer to said petition, said defendant alleges that, heretofore, in the month of October, 1867, on divers and sundry days, said plaintiffs were applied to by said defendant to do and perform the agreements and stipulations mentioned and set forth in the agreement set out in Exhibits "A" "B," annexed to said petition, to be done and performed by said plaintiffs, to wit, to handle the through-grain transported by said defendant, on the Dubuque and Sioux City Railroad,
16 at one cent per bushel; but said plaintiffs refused and neglected to handle said through-grain unless said defendant paid the sum of one cent and a half per bushel for such handling, contrary to the stipulations and agreements which said plaintiffs were under obligations to do and perform by virtue of said contract, and said defendant was compelled to and did pay said plaintiffs, one cent and a half per bushel for handling said through-grain.

And for a further and third answer and defence, said defendant alleges that the said contract, mentioned in Exhibits "A" and "B," in plaintiffs' petition, was made in restraint of general trade and commerce, in contravention of law and sound public policy, and creates a monopoly which is detrimental to the public interest, hence is illegal and void.

Fourth. And for a further and fourth answer and defence, said defendant alleges that the Dubuque and Sioux City Railroad Company had no right, power, or authority, under its charter, to enter into the contract set out in Exhibits "A" and "B," of plaintiffs' petition.

Fifth. And for a further and fifth answer and defence to said petition, said defendant alleges that it has fully paid said plaintiffs all that is due and oweing said plaintiffs, under and by virtue of the contract set out in Exhibits "A" and "B," in said plaintiffs' petition.
17 Wherefore said defendant asks to be hence dismissed with its costs.

ALLISON, CRANE AND ROOD,
Attorneys Illinois Central R. R. Co.

On the 23d day of March, 1868, defendants filed their answer, as follows:

District court, Dubuque County.

A. W. RICHMOND AND JOHN JACKSON *vs.* THE DUBUQUE AND SIOUX CITY R. R. Co. and the Illinois Central R. R. Company. } On injunction for specific performance.

The defendants in the above-entitled action, for answer and defence to plaintiffs' petition herein, deny that said plaintiffs are entitled to maintain the action on contract by ordinary proceedings mentioned in said petition. Said defendants deny that, since the commencement of said action by ordinary proceeding, or at any other time, they have violated the contracts, or either of them, mentioned and set forth in Exhibits "A" and "B," annexed to plaintiffs' petition, in said action, or that they now violate said contracts. Said defendants deny that they, or either of them, have, since the commencement of said action, or at any other time, prevented said plaintiffs from handling, at their
18 elevator, any of the through-grain which they are entitled to handle under and by virtue of said contracts. Said defendants further deny that if said plaintiffs had the handling of the through-grain received and transported on the Dubuque and Sioux City Railroad beyond the city of Dubuque, large quantities of the same would remain in store in said elevator more than ten days, or any part of the same would remain in store in said elevator more than ten days. Said defendants deny that great loss and irreparable damage is being done said plaintiffs by any violation, on the part of said defendants, or either of them, of said contracts, as is alleged in said plaintiffs' petition, in this action, or by any other violation of said contracts, on the part of said defendants, or either of them. Said defendants also deny that said plaintiffs have no complete and adequate remedy at law for their alleged and pretended loss and damages.

Second. And said defendants allege that, of all of the through-grain referred to in plaintiffs' petition, in this action, which has been received and transported by and on said Dubuque and Sioux City Railroad since the commencement of said plaintiffs' action by ordinary proceedings, and of all said through-grain so received and transported now, no part of said through-grain would remain in store in said elevator if said
19 plaintiffs had had or now had the handling of the same, as they allege they have a right to do.

And defendants further allege that no part of the through-grain, mentioned in said plaintiffs' petition, would remain in store in said elevator more than ten days, except in case of unforeseen accident or peril. And said defendant The Illinois Central R. R. Co. alleges that, in October, 1867, at different times, said plaintiffs were applied to by said defendant, to do and perform the agreements mentioned and set forth in the agreement set out in said Exhibits "A" and "B," to be done and performed by said plaintiffs, to wit: to handle the through-grain, transported by said defendant, on the Dubuque and Sioux City Railroad, *to the* at one cent per bushel; but said plaintiffs refused, and neglected to handle said through-grain, unless said defendant paid the sum of one cent and a half per bushel for such handling, contrary to the agreements which said plaintiffs were under obligation to do and perform, by virtue of said contract or agreement, and said defendant was compelled and did pay said plaintiffs one cent and a half per bushel for handling said through-grain. And said defendants allege that the transit of grain from the terminus of the Dubuque and Sioux City Railroad, to the Illi-

nois Central Railroad, or across the Mississippi River, through
20 the plaintiffs' elevator, requires a much longer time than the transfer of the same in the cars, by boat, as defendants are now transferring the same; and the cost of the transfer of grain through said elevator, as aforesaid, is very much greater than the cost of the transfer of the same in the manner now employed by the defendants, as aforesaid. And said defendants allege that the loss and destruction of grain while being transferred through said elevator, as aforesaid, is much greater than the loss and destruction of the same while being transferred as defendants are now transferring the same, as aforesaid; and that when the grain was transferred through said elevator as aforesaid, there was great loss and shortage in the grain, and the same was occasioned, as defendants believe, by the transferring of the grain through plaintiffs' said elevator; and while the grain was being transferred through plaintiffs' said elevator, good grain was often mixed with grain of poor quality and of less value, and the grain delivered to the shippers' consignees was often of inferior quality, and had to be sold for a less price than the grain which was delivered to said elevator to be transferred, as aforesaid; and defendants say that because of said loss, destruction, shortage, and mixture, the shippers of grain made constant and numerous complaints to said defendants, and threatened to seek other means and ways for transportation of their grain;
21 but since defendants have transferred grain in cars, by boat, as aforesaid, instead of through plaintiffs' elevator, said complaints have not been made.

And said defendants further say that if they are compelled to transfer grain through plaintiffs' elevator, the business of said company will be greatly damaged; the transportation of grain from the interior, western, and northern parts of the State, will be greatly interfered with and delayed, and a large amount of grain will seek and be taken to market by and through other lines of transportation.

Wherefore said defendants pray that plaintiffs' petition for injunction be denied, and costs allowed them against said plaintiffs.

ALLISON, CRANE AND ROOD,
Defendants' Attorneys.

STATE OF IOWA, DUBUQUE COUNTY, *ss:*

I, Jesse P. Farley, being duly sworn, depose and say that I am an officer of both the defendants mentioned in the foregoing answer; that I have the general management of the Dubuque and Sioux City Railroad for the Illinois Central Railroad Company, lessees thereof, and have the general management of the business, in Iowa, of the Dubuque and Sioux City Railroad Company; that I have personal knowledge of the matters and allegations set forth in said answer, and that the
22 same are true, as I verily believe.

J. P. FARLEY,
Vice Pres., and Gen'l Manager D and S. C. R. R. Co., and Sup't Iowa Division Illinois Central Railroad Co.

Subscribed and sworn to by J. P. Farley, before me, this January 24th, 1868.

Witness my hand and notarial seal.

[SEAL.]

T. PALMER ROOD,
Notary Public.

10 *Dubuque and Sioux City R. R. Co. et al. vs. Richmond and Jackson.*

Afterwards, on the 28th day of March, 1868, the district court entered the following decree:

ALFRED W. RICHMOND AND JOHN JACKSON
vs.
THE DUBUQUE AND SIOUX CITY RAILROAD Company and the Illinois Central Railroad Company. } 3556. Law.

This cause now came on to be heard on the motion of defendants for a new trial, which was argued and submitted, and the court being satisfied that the jury included in its verdict, and allowed plaintiff to recover grain that came over the Dubuque *and Sioux City* Southwestern Railroad to Farley, and thence to Dubuque over the Dubuque and Sioux City Railroad, now operated by the defendant The Illinois Central Railroad Company, for which it is the opinion of the court, plaintiffs are not entitled to recover from defendants; and that the jury
23 allowed the plaintiffs to recover for fifteen cars of grain, received over the Dubuque and Sioux City Railroad proper, on the twenty-second of January, A. D., eighteen hundred and sixty-eight, but which were not transferred to Dunleith until the following day, in all, (at one cent per bushels, amounting to the sum of four hundred and sixty-five $\frac{8}{100}$ dollars,) the court did order that said motion be sustained, and a new trial awarded, unless the plaintiffs consent to rebate from the amount of the verdict in this cause, the amount above mentioned, to which plaintiffs then accepted; and they thereupon consenting to such rebate, the court doth adjudge that said motion be overruled, and that plaintiffs have judgment against said defendants, for the sum of three thousand four hundred and forty-six $\frac{32}{100}$ dollars, and for the costs herein, which are taxed at dollars, and that execution issue therefor; to all of which defendants excepted. And the petition of plaintiffs for an injunction in this cause coming on to be heard, and being fully considered, the court doth refuse the writ of injunction, and doth order that *that* the defendants file with the clerk of this court, semi-monthly reports, giving accurate accounts of all through-grain, transported on the Dubuque and Sioux City Railroad, not otherwise consigned to consignees residing in Dubuque; and under the
24 control of defendants, operating said road, by being especially consigned to them, or under their control as common carriers of such grain in transit, to points beyond Dubuque.

To all of which the plaintiffs and defendants except.

On the 8th day of June, 1869, plaintiffs filed their supplemental petition in equity as follows:

Supplemental petition.

A. W. RICHMOND AND JOHN JACKSON, PLAINTIFFS,
vs.
THE ILLINOIS CENTRAL R. R. CO. AND THE DUBUQUE AND SIOUX CITY R. R. CO., defendants. } In equity.

To the district court of Dubuque County:

Plaintiffs, complaining of the defendants' supplemental to the petitions heretofore filed in this cause, say that from and after the filing of

the original petition in this action, and until about the close of the month of June following, the defendants complied with the contract sued on in this action, in part, and permitted the plaintiffs to have the handling of a portion of the grain plaintiffs were entitled to have the handling of under said contract; but, from the time of filing said original petition, and until the latter part of said month of June, the defendants received a large quantity of through-grain at Dubuque, which
25 they passed through Dubuque without allowing plaintiffs to have the handling of, and without paying the plaintiffs therefor; and, since said last of June, the defendants have received a large quantity of through-grain over said Dubuque and Sioux City Railroad, which should have been passed through plaintiffs' elevator, under said contract, and have passed the same through Dubuque, without passing it through said elevator, and without paying plaintiffs the contract price therefor.

And plaintiffs further aver that the defendants are daily receiving, and passing through Dubuque, grain, brought to Dubuque over the Dubuque and Sioux City Railroad, consigned to points beyond Dubuque, without passing the same through plaintiffs' elevator, or paying plaintiffs therefore, as required by the contracts sued on in this action.

And plaintiffs further aver that defendants have now wholly failed to observe said contract, or to give the plaintiffs' elevator the handling of any of the through-grain brought to Dubuque over the Dubuque and Sioux City Railroad, and aver their intention in the future to be, not to allow plaintiffs' elevator to have the handling of any such through-grain.

And plaintiffs further aver that the defendants have never, in any particular, observed the order of this court to render semi-monthly reports, and defendants do not intend to observe the same.

And plaintiffs further aver that they have no means by which to ascertain what amount of through-grain is brought to Dubuque,
26 and passed through it by defendants, without passing through plaintiffs' elevator, and there is no means of ascertaining the same within the reach of plaintiffs, or by which plaintiffs could keep an account of the same, so as to arrive at their damages by the wrongful acts of defendants as aforesaid, the whole matter being exclusively within the knowledge of defendants, and they having the power to keep the account thereof, to suit their views of the matter, without reference to the interest of plaintiffs, or of the obligations of said contract.

And plaintiffs further aver that it is impossible now to estimate what damage they will suffer in the future, during the time said contract has to run, because it is now impossible to say what grain may, during such time, be brought to Dubuque over the Dubuque and Sioux City Railroad, and which should pass through said elevator, under said contract, if defendants are allowed to proceed as they are proceeding, disregarding the same.

Wherefore plaintiffs pray that an account be taken of the amount of grain which has been received at Dubuque, and which, by the terms of said contract, should have been passed through said elevator, and which has not been passed through it from the time of the institution of this suit up to the time of such accounting, and that the damages to plaintiffs therein be ascertained, and that for such sum and the amount found due plaintiffs by the supreme court, plaintiffs have a de-
27 cree against defendants, and that the defendants be decreed specifically to perform said contract; and, failing in such specific

performance, that plaintiffs have a decree against defendants that, from time to time, during the continuance of said contract, as shall be fixed by said decree, they account to this court the amount of through-grain received at Dubuque over the Dubuque and Sioux City Railroad, with liberty to plaintiffs to take issue, from time to time, on the correctness of such accounts, and to move for judgment, from time to time therein, for such sums as may appear to be due them from time to time thereon; and that plaintiffs have such further and other relief as to the court shall seem meet.

P. SMITH AND GRIFFITH AND KNIGHT,
Attorneys for Plaintiffs.

On the 30th day of June, 1869, defendants filed a demurrer as follows:

Demurrer to plaintiffs' so-called supplemental petition.

District court, Dubuque County, Iowa.

A. W. RICHMOND AND JOHN JACKSON
vs.
THE ILLINOIS CENTRAL R. R. CO. AND THE DUBUQUE and Sioux City R. R. Co., defendants.

And now come the defendants The Illinois Central and The Dubuque and Sioux City Railroad Companies, and demur to the plaintiffs'
28 so-called supplemental petition in the above-entitled suit, and for causes of such demurrer assign the following, to wit:

First. The said petition does not state facts sufficient to constitute a cause of action, or entitle the plaintiffs to the relief asked for in said petition.

Second. The plaintiffs are not entitled to the relief asked for, either in law or equity—the cause having been tried and judgment rendered.

Third. Said petition is founded upon a judgment at law, already rendered.

Fourth. The said petition does not set forth the contracts on which plaintiffs have brought their suit.

Fifth. Said petition does not aver any promise or undertaking by defendants to pay them the sum of money claimed.

Sixth. The petition does not show any right in the plaintiffs to the account asked for, nor any right to relief based upon such account.

Wherefore defendants ask the judgment of this court upon the sufficiency in law of said petition.

W. WEIGLEY AND CRANE AND ROOD,
Attorneys for Defendants.

29 On the 17th day of July, 1869, the plaintiffs filed their substitute for the supplemental petition as follows:

ALFRED W. RICHMOND AND JOHN JACKSON, plaintiffs,
vs.
THE ILLINOIS CENTRAL R. R. CO. AND THE Dubuque and Sioux City R. R. Co., defendants.

To the district court of Dubuque County, Iowa:

As a substitute for their supplemental petition heretofore filed in this cause, plaintiffs, complaining of defendants, say:

1st. That, on, to wit, the 22d day of August, A. D. 1860, the defendant The Dubuque and Soiux City Railroad, as did also the Dubuque Elevator, mutually entered into a written contract, a copy of which is hereunto annexed, marked "Exhibit A," and is referred to as a part hereof; and thereafter, on, to wit, the day of January, A. D. 1861, the same parties mutually entered into a written contract supplemental to said original contract, a copy of which is also hereto annexed, marked "Exhibit B," and is referred to as a part hereof.

2nd. That, to wit, on the day of January, A. D. 1868, the plaintiffs filed their petition in this court against both of the defendants herein setting up said contract and supplemental contract, the
30 obligation of defendants to perform the same; and that the defendants, between the 1st day of October, A. D. 1869, and the date of the filing of said petition, had transported into Dubuque, and through it, a large quantity of through-grain, which, under said contract and supplemental contract, plaintiffs were entitled to have the handling of, without allowing plaintiffs to have the handling of and without paying the plaintiffs for the same; and claiming damages from defendants for such breach of contract.

3rd. The defendants appeared and pleaded to said petition, and such proceedings were had in said case, that a verdict and judgment were rendered in this court against defendants for damages for their nonperformance of said contract and said supplemental contract.

4th. That both parties appealed to the supreme court of this State from said judgment, and there such proceedings were had that said judgment was reversed and the cause was remanded to this court, with directions to allow plaintiffs a rebate, ordered by this court from the verdict when the case was originally before it; and said cause now stands in this court in the procedendo of the supreme court, no judgment having been rendered therein, and no proceeding having been had therein since its remand to this court.

5th. That the proceedings already had in this court, and the judgment and opinion of the supreme court, expressly affirm said con-
31 tract and supplemental contract, and the ob'igation of the defendants to perform the same; the supreme court expressly holding that, "the plaintiffs are entitle' to handle in their elevator all grain coming over defendants' railroad, whether in its own cars or any other connecting road, primarily shipped for points beyond or other than Dubuque, and to have therefor the price stipulated from the defendants."

6th. That, since the commencement of said action, a large amount of through-grain, as described by the supreme court, as aforesaid, has been brought by defendants over the Dubuque and Sioux City Railroad to Dubuque, and by them passed through to points beyond Dubuque, without having been handled by, or being stored in, the elevator of the plaintiffs, and that the quantity so passed, without being handled, as aforesaid, by plaintiffs, amounted to about seven million bushels.

7th. That the defendants are daily receiving through-grain, as aforesaid, and are daily passing the same through Dubuque, without permitting plaintiffs to have the handling of the same at their elevator, as aforesaid, and without paying the plaintiffs therefor; and since the institution of said original suit, the defendants have daily violated said contract and supplemental contract, and they are now, from day to day, wilfully and fraudulently violating the same by passing large quantities of through-grain through Dubuque without allowing plaintiffs'

32 elevator to handle the same, and without paying the plaintiffs therefor, which grain so passed plaintiffs are entitled to have the handling of under said contract and supplemental contract.

8th. That the plaintiffs' elevator is run by steam-power, and in its erection required and necessarily caused a very heavy outlay; and has a capacity of about one hundred and thirty thousand bushels; which said elevator was built in pursuance of said contract and supplemental contract, on the depot grounds of the defendants, and was constructed solely with a view to carry out the provisions of said contract and supplemental contract; and, owing to its situation, it is wholly valueless for any other purpose than a grain-elevator for and in connection with the railroad of defendants.

9th. That it is the express purpose of defendants, wilfully and fraudulently, to pass such "through-grain" through Dubuque, from time to time, without permitting the plaintiffs to have the handling thereof, and without paying the plaintiffs for the same; and for the purpose, as defendants express it, of compelling these plaintiffs to surrender and abandon said contract and supplement; but plaintiffs aver they are now, and always have been, ready and willing to comply with said contracts, and always have complied with the same.

10th. That defendants never in any particular have observed the order of this court to render semi-monthly reports, but, so far, have treated that order with contempt, and plaintiffs have no means
33 within their power by which they can truly ascertain, from time to time, what quantities of such through-grain is brought to Dubuque, and passed through it by defendants, as aforesaid, the whole matter being exclusively within the knowledge and control of defendants, and they have the power to keep the account thereof to suit their views of the matter, without reference to the interest of the plaintiffs, or of the obligation of said contract and supplement; and plaintiffs say it is impossible now to say what damage they will suffer in the future, during the time *of* said contract has to run, because it is now impossibly to say what grain may, during such time, be brought to Dubuque over the Dubuque and Sioux City Railroad, and which should pass through said elevator under said contract, if defendants are allowed to proceed, as they are proceeding, disregarding the same.

11th. That there is now due to plaintiffs from defendants, on account of the grain carried through Dubuque by them, as aforesaid, and for storage, which plaintiffs have lost in consequence of the wrongful acts of defendants, as aforesaid, the sum of one hundred thousand dollars.

12th. That defendants, from time to time, deliver to plaintiffs some through-grain to handle, and plaintiffs are therefore necessarily compelled to be under great expense, daily, to be in readiness to handle what may, from time to time, be thus given to them.

34 13th. The plaintiffs have no adequate remedy at law for the grievances complained of.

Wherefore plaintiffs pray that an account be taken of the amount of "through-grain" which has been passed through Dubuque in violation of said contract and supplement, as aforesaid; and that, for their damages consequent thereon, and for the amount found due by the supreme court, the plaintiffs have judgment; that defendants be decreed specifically to perform said contract and supplement, or in lieu thereof, that plaintiffs have a decree against defendants that, from time to time, during the continuance of said contract and supplement, as shall be fixed by said decree, they account to

this court the amount of such through-grain, with liberty to plaintiffs to take issue, from time to time, as to the correctness of such accounts, and to move for judgment, from time to time, thereon, for such sum as may appear to be due plaintiffs, from time to time, thereon; and that plaintiffs have such further and other relief as to the court shall seem meet.

PLATT SMITH, AND GRIFFITH AND KNIGHT,
Plaintiffs' Attorneys.

35 On the 14th day of July, 1869, defendants filed a motion as follows:

Motion to strike out redundant matter from supplemental petition.

STATE OF IOWA,
County of Dubuque, ss:

District court of said county.

A. W. RICHMOND AND JOHN JACKSON, PLAINTIFFS,
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY and the D. and S. C. R. R. Co.

And now comes the defendants The Illinois Central Railroad Company and the Dubuque and S. C. R. R. Company, and move the court to strike from plaintiffs' so-called supplemental petition paragraphs numbered two, three, four, five, and seven, respectively, and all of paragraph nine, except that part following the words, "abandon said contract and supplement," on the ground that said paragraphs are wholly irrelevant and redundant, and form no material part of plaintiffs' petition.

CRANE AND ROOD,
Att'ys for Defendants.

36 On the 25th day of November, 1869, defendants filed their motion for judgment as follows:

STATE OF IOWA,
County of Dubuque, ss:

District court of said county.

ALFRED W. RICHMOND AND JOHN JACKSON
vs.
THE DUBUQUE AND SIOUX CITY R. R. CO. AND the Illinois Central Railroad Company.

And now comes the defendants and move the court to enter up final judgment in the above-entitled cause.

W. WEIGLEY AND
CRANE AND ROOD,
Attorneys for Defendants.

On the day of , the defendants filed a motion to dismiss the supplemental petition, as follows:

STATE OF IOWA,
County of Dubuque, ss:

District court of said county.

ALFRED W. RICHMOND AND JOHN JACKSON
vs.
THE ILLINOIS CENTRAL R. R. CO. AND THE Dubuque and Sioux City R. R. Co.

And now come the defendants and move the court to dismiss
37 the so-called supplemental petitions filed by the plaintiffs in the above-entitled suit, and assign the following reasons therefor:

First. The court has no jurisdiction to try the issues raised in said petition, inasmuch as said suit has not been commenced in the manner required by law.

Second. The docket fee has not been paid, nor has the cause been entered on the records of this court, as the law directs; but the said petitions are filed in a cause wherein a judgment has been rendered and the cause finally disposed of.

W. WEIGLEY AND
CRANE AND ROOD,
Attorneys for Defendants.

On the day of , , the defendants filed a demurrer to supplemental petition, as follows:

STATE OF IOWA,
County of Dubuque, ss:

District court of said county.

A. W. RICHMOND AND JOHN JACKSON
vs.
THE DUBUQUE AND SIOUX CITY R. R. CO. AND the Illinois Central R. R. Co.

And now come the defendants and demur to the so-called supplemental petition of the plaintiffs in the above-entitled cause, and assign the following reasons therefor, to wit:

First. The court has no jurisdiction to try the issues therein contained.

38 Second. The said petition shows or sets forth no ground for equitable relief.

Third. The 2d, 3d, 4th, and 5th paragraphs, and the 8th and 9th paragraphs, do not constitute any part of a cause of action.

Fourth. Said petition does not set forth facts sufficient to constitute a cause of action, in this, that it does not show why the petition should not be filed in another and distinct cause or suit.

W. WEIGLEY AND
CRANE AND ROOD,
Attorneys for Defendants.

On the 15th day of April, 1870, defendant filed its answer, as follows:

Answer.

District court, Dubuque County.

A. W. RICHMOND ET AL.
vs.
THE ILLINOIS CENTRAL R. R. CO. ET AL.

The Dubuque and Sioux City Railroad Company, one of the defendants in the above-entitled action, for answer to the plaintiffs' substituted supplemental petition herein, denies each and every allegation in said petition contained.

Second. And for a second answer to said petition said defendant alleges that said plaintiffs have been paid in full for all grain which they were entitled to handle under and by virtue of the contracts mentioned and referred to in said petition.

39 Third. And for a third answer to said petition, said defendant alleges that, on or about the 23d day of January, 1868, said plaintiffs commenced an action in the *in the* district court of Dubuque County, Iowa, against said defendants by filing a petition in said court, in which said plaintiffs alleged a breach, on the part of said defendants, of the contracts mentioned and set forth in the petition herein, and claiming damages of said defendants for said breach, which breach by defendants was the not performing the very same identical promises and undertakings, and each and every of them mentioned and alleged in said petition herein; and such proceedings were thereupon had, in said action, that, afterwards, at the February term, 1870, of said court, a judgment was rendered in said action, by said court, on the 22d day of February, 1870, in favor of said plaintiffs and against said defendants for the sum of forty-three hundred and sixty-five and $\frac{1}{100}$ dollars for the damages which said plaintiffs had sustained by said breach of said contracts on the part of said defendants; which said judgment still remains in full force and effect, not in the least reversed, satisfied, or made void.

Wherefore said defendant prays to be hence dismissed with costs.

CRANE AND ROOD,
Attorneys for D. and S. C. R. R. Co.

40 On the 15th day of April, 1870, defendant filed its answer as follows:

Answer.

District court, Dubuque County.

A. W. RICHMOND ET AL.
vs.
THE ILLINOIS CENTRAL R. R. CO. ET AL.

The Illinois Central Railroad Company, one of the defendants in the above-entitled action, for answer to the plaintiffs' substituted supplemental petition herein, denies each and every allegation in said petition contained.

Second. And for a second answer to said petition, said defendant alleges that said plaintiffs have been paid in full for all grain which they were entitled to handle under and by virtue of the contracts mentioned and referred to in said petition.

Third. And, for a third answer to said petition, said defendant alleges that, on or about the 23d day of January, 1868, said plaintiffs commenced an action in the district of Dubuque County, Iowa, against said defendants by filing a petition in said court, in which said plaintiffs alleged a breach on the part of said defendants, of the contracts mentioned and set forth in the petition herein, and claiming damages of said defendants for said breach; which breach by defendants was the not performing the very same identical promises and undertakings
41 and each and every of them mentioned and alleged in said petition herein; and such proceedings were thereupon had in said action that, afterwards, at the February term, 1870, of said court, a judgment was rendered in said action by said court, on the 22d day of February, 1870, in favor of said plaintiffs and against said defendants, for the sum of forty-three hundred and sixty-five and $\frac{14}{100}$ dollars, for the damages which said plaintiffs had sustained by said breech of said contracts on the part of said defendants, which said judgment still remains in full force and effect, and not in the least reversed, satisfied, or made void.

Wherefore said defendant prays to be hence dismissed with costs.

CRANE AND ROOD AND W. WEIGLEY,
Attorneys for I. C. R. R. Co.

On the 19th day of December, 1870, defendants filed a motion as follows:

Motion.

District court, Dubuque County.

A. W. RICHMOND AND J. JACKSON
vs.
THE DUBUQUE AND SOUIX CITY R. R. CO. ET AL.

The defendants in the above-entitled action hereby moves the court to transfer said action to the law side of the court docket, for the reason that it appears from the papers and issues in said cause, that
42 the same is an ordinary action at law, and is upon the wrong side of the docket of said court.

CRANE AND ROOD,
Defendants' Attorneys.

On the 23d day of December, 1870, the defendants filed a motion to transfer to law side as follows:

District court, Dubuque County.

A. W. RICHMOND ET AL.
vs.
THE DUBUQUE AND SIOUX CITY R. R. CO. ET AL.

The defendants in the above-entitled action move the court to transfer said action to the law side of the court docket, for the reason that it appears from the papers in said action that the same is an ordinary action at law, and is upon the wrong side of the docket of said court; also for the reason that the answers of said defendants and each of them, presents a defence on which they and each of them are entitled to a trial by jury in said action.

CRANE AND ROOD,
Def't's Att'ys.

On the 7th day of February, 1871, plaintiffs filed a motion to strike motions from the files as follows.

A. W. RICHMOND ET AL
vs.
THE ILL. C. R. R. CO. ET AL.

43 The plaintiffs move the court to strike the motions made by the defendants, to have this cause changed to the law side, and to have it treated as an ordinary action, from the files, on the following grounds, viz:

1st. Because said motions were filed after defendants filed their answers to the supplemental petitions, and too late, under the rules of law; and the questions raised by them have been heretofore determined in this case adverse to defendants.

PLATT SMITH, AND
GRIFFITH AND KNIGHT,
Attorneys for Plaintiffs.

On the 23d day of July, 1869, the following proceeding was had:

Procedendo.

A. W. RICHMOND ET ALS.
vs.
DUBUQUE AND SIOUX CITY R. R. CO. ET ALS.

In this cause plaintiffs filed a supplemental petition for the transfer thereof to the equity side of the docket, and for judgment and decree in chancery. Defendants file their motion to strike out portions of said supplemental petition.

SEPT. 14TH, 1869.—This cause coming up on defendants' motion to strike out portions of plaintiffs' supplemental petition, motion refused; defendants except.

44 DEC. 6TH, 1869.—This day defendants move for judgment on the verdict, in accordance with the ruling of the supreme court; also move to strike supplemental petition of plaintiffs from the files; demurrer to supplemental petition. By consent of parties, in open court, the same is argued and submitted, and the rulings on motions and demurrer, and judgment, are to be entered in vacation, as of this term, reserving right of exception to either party.

FEB. 22D, 1870.—This cause now coming on to be heard on the procedendo from the supreme court, and on the motion of defendants that judgment be entered in accordance with the opinion of supreme court, and on the motion of defendants to dismiss the supplemental petitions, filed by plaintiffs since the return of the cause from the supreme court, and also on the demurrer of defendants to said supplemental petitions; and, counsel for the respective parties being heard, the court doth consider and adjudge that the motion for judgment be sustained, and that, in accordance with the decision of the supreme court, that plaintiffs have judgment against defendants for the sum of 4,365.14 dollars and costs, taxed at dollars, and have execution therefor; to which plaintiffs except; and the court doth further consider that the motion

to dismiss, and the demurrer be, and the same are hereby, overruled; to which defendants except; and the defendants are hereby ruled
45 to answer said supplemental petitions on or before the 15th day of April, A. D. 1870.

FEB. 8TH, 1871. This cause coming on this day to be heard on the motion of defendants to transfer the same to the law docket, the said motion is overruled and defendants except.

FEB. 20, 1871.—This cause coming up on the 10th day of February, A. D. 1871, on the motion of the defendants to transfer the same to the law side or docket of this court, for the reason that there are no equitable issues raised by the pleadings in said cause, and that the matters set forth in defendants' answers raise questions which they have a right to have tried by a jury, it being admitted by plaintiffs that, until the last term of this court, said cause was not on the equity calender or docket of this court, and that defendants filed their motion to transfer the same as soon, during said last term of court, as they became aware that said cause was on said equity side of said court, said motion having been filed on the 23d day of December, 1870; after argument by counsel and due consideration by the court, it is ordered, adjudged, and decreed, that said motion be, and is hereby, overruled. To which ruling of the court the defendants then and there excepted.

FEB. 20, 1871.—And now this suit coming on for trial, the defendants demand a jury to try the issues between the parties thereto, which
46 the court refused to allow, but proceeded to try the cause according to the first method of trying causes; to all which the defendants then and there excepted.

The plaintiffs the' offered in evidence the bill of exceptions made at the trial of the case between the same parties, on the same contract, at a former term of this court; to the admission of which the defendants then and there objected, on the ground of irrelevancy, incompetency, and immateriality. The court overruled the objection; to which the defendants excepted. And the depositions of witnesses and other evidence being read, and the arguments of counsel heard, and the matter submitted to the court for decision:

1st. It is ordered, adjudged, and decreed, that plaintiffs have and recover of the defendants the sum of fifty-seven thousand seven hundred and fifty dollars, and costs of suit, taxed at $, in full satisfaction for their damage from January 23d, 1868, to the 1st day of May, 1870, but without prejudice to plaintiff's claim for damages after that date.

2d. That D. C. Cram be appointed referee to take proofs from the parties, and report the damages to plaintiffs from May 1st, 1872.

3rd. That defendants keep an account at Dubuque, of all through-grains shipped past plaintiffs' elevator in violation of the contract,
47 and to report weekly to the referee until the termination of the contract, with leave to either party to move the court for judgment upon report of referee, by giving to the opposite party ten days' notice previous to any term of this court; each party to have the right to contest the amount of damages before the referee.

Each party to have leave to move the court for a modification of this order, and for other orders, or an injunction, and upon ten days' notice to the other party previous to any term of court.

4th. Defendants may elect to have damages assessed in gross, by ap-

plication, with ten days' notice to plaintiffs, previous to any term of court. Ordered and decreed as aforesaid, the 13th day of February, 1871.

To each and every part of the foregoing decree or judgment the defendants except.

Plaintiffs' claim for storage and for interest in the assessment of damages, and that the decree be expressed in coined dollars and parts of dollars is disallowed; to the disallowance of all which plaintiffs except.

48 On the 20th day of February, 1871, the court rendered the following opinion:

District court, Dubuque County.

A. W. RICHMOND AND JOHN JACKSON
vs.
THE DUBUQUE AND SIOUX CITY R. R. CO. AND The Illinois Central R. R. Co.

The first and most important question in this case is, whether the former judgment in favor of plaintiffs is a bar to further relief.

The supplement to the original contract between the D. and S. C. Railroad Co. and the Dubuque Elevator Co. contains this covenant:

"And the D. and S. C. Railroad Co. agree that the Dubuque Elevator shall have the handling of all through-grain, and agree to pay the Dubuque Elevator one cent a bushel for receiving and discharging thereof as aforesaid."

This is a continuing agreement, but is it entire or severable?"

To determine this, reference should be had to the terms of the contract, the subject-matter, and the circumstances under which it was made.

The use of elevators and the business of transporting grain by railroad, in cars, was understood by both parties to the contract at
49 the time of its execution, and the agreement was to continue for nearly fifteen years.

They expected that grain would be received in the usual course of business at the elevator, and when discharged, that compensation, under the contract, would be made at the rate agreed upon. The quantities of grain to be received, and the times when were uncertain; but when passed through the elevator, both parties contemplated payment would be made at the stipulated price.

It was, on the part of the elevator co., in effect, a contract to do different things at different times, and, on the part of the railroad co., an *an* agreement to pay when done.

If this is the correct view, the contract is seperable, and for every breach an action at law could be maintained.

The petition, under which the former judgment was had, shows that plaintiffs claimed only for partial breach of the contract.

If the facts had warranted, plaintiff might have claimed as for a total breach, and recovered damages accordingly, but the pleadings were not so framed, and the court could not have allowed damages for an entire breach, nor does it appear that, previous to the rendition of the former judgment, plaintiffs had any knowledge that defendant had determined they should have the handling of no more grain during the term of the lease.

It follows that the previous judgment does not conclude plaint-
50 iffs, except for damages, prior to January 23d, 1868.

From that time to 1st of May, 1870, the Illinois Central Railroad Company shipped past the elevator, seven million bushels of grain, for which plaintiffs, by the agreement, were entitled to one cent per bushel. That company having assumed the contracts in question from the D. and S. C. Railroad Co., are liable to plaintiffs for the contract price, less the cost of handling the grain, which, under the evidence, is most satisfactorily fixed at one and three-fourth mills per bushel. The contract provides compensation for storage after ten days, but does not require any grain to remain in store that long.

If the contract had been complied with, plaintiffs would doubtless have reaped a profit from storage; but the damages from loss of this, as well as from loss on sacking grain and shelling corn, are denied as being remote, uncertain, and speculative.

Plaintiffs ask interest from March 12, 1869; this is refused—the damages being unliquidated.

Plaintiffs urge that the decree should be entered as payable in gold, the last contract, bearing date January 22d, 1861.

Had the contract stipulated for payment of damages in coin the decree would properly require payment in coined dollars and parts of dollars.

In all cases where contracts do not specify payment to be made in coin or some particular denomination of money, the correct prac-
51 tice is to enter judgment for money generally, without specification. In support of this, see Butler vs. Horvitz, 7 Wal., 258.

The cases cited by plaintiffs, stipulated for payment in coin.

A decree will be entered ordering judgment for plaintiffs for fifty-seven thousand seven hundred and fifty dollars and costs of suit. This to be full satisfaction for damages since former judgment to May 1st, 1870, and without prejudice to plaintiffs' claim for damages after that date.

A referee will be appointed to take proofs from the parties, and report the damages to plaintiffs, from 1st of May, 1870.

Defendants ordered to keep an account at Dubuque, of all through-grain shipped past the elevator, in violation of the contract, and to report weekly to the referee, until the termination of the contract, with leave, to either party, to move the court for judgment upon report of referee, by giving to the opposite party ten days' notice, previous to any term of this court.

Each party to have the right to contest the amount of damages before the referee.

Each party to have leave to move the court for a modification of this order for other orders or an injunction, and upon ten days' notice to the other party previous to any term of court.

The defendants may elect to have damages assessed in gross by application, with ten days' notice to plaintiffs, previous to any term of court.

52 Afterwards, on the 11th day of March, 1871, plaintiffs served and filed the following notice of appeal:

In district court, Dubuque County, February term, 1871. In equity.

ALFRED W. RICHMOND AND JOHN JACKSON
vs.
THE DUBUQUE AND SIOUX CITY RAILROAD Company and the Illinois Central R. R. Company.

To the clerk of the district court of Dubuque County, Iowa, and to Messrs. Crane and Rood, attorneys for defendants, in the above-entitled suit:

You are hereby notified the plaintiffs appeal to the Supreme Court, from that part of the decree of the district court rendering judgment in favor of plaintiffs, for fifty-seven thousand seven hundred and fifty dollars, and from that part of the decree disallowing plaintiffs' claim for storage and interest, in the assessment of the damage, and from the refusal of the district court to express the judgment as payable in coined dollars and parts of dollars, in the above-entitled suit.

GRIFFITH AND KNIGHT AND
PLATT SMITH,
Attorneys for Plaintiffs.

Service of within notice accepted, March 11, 1871.

CRANE AND ROOD,
Att'ys for Defendants.
P. J. QUIGLEY,
Clerk of District Court, Dubuque County, Iowa.

Filed, March 11, 1871.

P. J. QUIGLEY, *Clerk.*

53 *Abstract of evidence.*

ALFRED W. RICHMOND AND JOHN JACKSON, appellants, *vs.* DUBUQUE AND SIOUX CITY R. R. COMPANY AND Illinois Central R. R. Company, appellees. } In equity.

EVIDENCE.

TUCKER.

The testimony of Joseph F. Tucker, general freight-agent of the Illinois Central Railroad, shows that seven million bushels of grain was shipped, from the 23d day of January, 1868, to the 1st day of May, 1870, from points west of Dubuque, and consigned to points east of Dubuque; that "most of the way-bills, which accompanied the grain, had 'notation' on them, made, I presume, by the owner of the grain, or by his direction, that the grain was not to go through the Dubuque Elevator, but was consigned to different points east of Dubuque." The statement of seven millions includes grain from the Dubuque Southwestern Railroad.

RICHARD SCOTT, a witness for plaintiffs, sworn, testified as follows:

Part of time in 1865, and fall of 1866, and part of 1867, in fact, all of 1867, I was with plaintiffs in the capacity of book-keeper.

Q. State, as near as you can, the amount of grain received at plaintiffs' elevator from the railroad company, per annum, during the time that you were with them.

54 A. One year, I think 1866, one million seven hundred to eight hundred thousand bushels; I mean between seventeen and eighteen hundred thousand bushels. In 1865, between two and three hundred thousand bushels more. In 1867, it was a good deal less; I could

not tell how much less. It was probably one million five hundred bushels in all.

Q. State whether the Illinois Central Railroad Company delivered, at plaintiffs' elevator, all through-grain, during the year 1867, after they leased and took possession of the Dubuque and Sioux City Railroad; and if you say they did not, state what part of the year 1867 they failed to deliver any part of through-grain.

A. They did not. I think it was in September they failed to deliver, and clear through the year from that time. They deliver' some through-grain, but not all.

Q. State, as near as you can, the amount of storage realized by plaintiffs at their elevator, per annum, during the time you were with them, if anything.

A. From four to six thousand dollars per annum.

Q. State, as near as you can, what amount, if anything, the plaintiffs realized per annum, during the time that you were with them, from the sacking of grain at their elevator.

A. From three thousand to forty-five hundred dollars per annum.

Exhibit "A" is in the handwriting of W'm F. Blake. At the date thereof he was station-agent at the freight-depot, at Dubuque, of
55 the Illinois Central Railroad Co., and agent of the Southwestern Railroad Co., as far as I know, and did all their business. At that *I* date, I believe, J. P. Farley called himself division-superintendent of the Illinois Central Railroad Co., and was superintendent of the Southwestern Railroad Co. He acted as superintendent of the Illinois Central R. R. Co., Iowa division.

Cross-examination:

Q. How do you get at the amount of grain received at the elevator, 1865, 1866, and 1867?

A. From memory; general recollection of the run of the business.

Q. What do you mean by through-grain?

A. Grain received in the elevator, and afterwards shipped out.

Q. Was it through-grain, if shipped up to Dubuque, after passing through the elevator?

A. I should not consider it so.

Q. Do you understand the grain shipped to Dubuque, placed in the elevator, with the view of being sent to another marked, as through-grain?

A. Yes, sir.

Q. Would through-grain comprehend all that class of grain?

A. Yes, sir.

Q. Do you know where or to whom the grain was consigned that was place' in the elevator?

A. I do know where and to whom; to H. Jackman, N. C. Ryder, G. B. Hamilton, L. N. Gibbs and Co., and Siller & Co., all of Dubuque,
56 Iowa. The grain was billed to Dubuque and Chicago. The grain would be billed, sometimes, to these men Dubuque, and, sometimes, to these men Chicago.

Q. Have you any knowledge of any grain consigned to points beyond Dubuque being delivered to the elevator at any time after the 10th day of November, 1867? If so, state to whom it was consigned, and when and where.

A. Yes; there was, I think. After the 10th of November, 1867, the agent of the Illinois Central R. R. Co. refused to deliver Richmond and Jackson any bills, but the Illinois Central Railroad agent billed the grain, or caused it to be billed, in his office, so I cannot tell to whom and

where the grain was billed. That is, Mr. Blake, agent of Illinois Central R. R. Co., ordered grain to be loaded in barges, from the elevator, to be shipped to points east or south. The shipping-bills were made in the office of the Illinois Central R. R. Co.

Q. State when he ordered the grain to be shipped.

A. I think it was from the 10th of November, 1867, to the close of navigation.

Q. You say the agent of the Illinois Central R. R. Co. refused to deliver Richmond and Jackson any bills. State what character of bills you alluded to.

A. Before that time R. R. co. delivered to Richmond and Jackson all bills for grain that went through the elevator on which was the consignment and charges, which Richmond and Jackson collected
57 the freight, and paid to the Illinois Central R. R. Co. After that *that* time the Illinois Central Railroad Co. made out the bills themselves, and collected the freight themselves.

Q. By whom was the storage, referred to by you, paid?

A. Generally by the shippers.

Exhibit "A," referred to by the witness, is as follows:

"DUBUQUE, *May* 12, 1868.

"Messrs. RICHMOND AND JACKSON.

"GENTS: On and after June 1st, 1868, the Dubuque Southwestern R. R. Co. will require all grain received at this station to be unloaded at owners' expense. Therefore we decline to pay you for handling grain received over that road after above date.

"Per order of J. P. Farley, superintendent.

"Respectfully,

"W. F. BLAKE, *Agent.*"

Being recalled, he testified as follows:

Q. Look at your answer to direct interrogatory No. 4, and say whether it is correct is so far as it states that it was in September that the Illinois Central R. R. Co. failed to deliver the grain to the elevator; and if not, state if you know when it was that that company first refused to give the elevator the handling of the grain.

A. September is not correct. It was some time about the middle of November. I was in plaintiffs' employ at the elevator during the months of January, February, March, and a part of April, 1868, as book-keeper, keeping the books of the elevator.

58 Q. While you were at the elevator, in the employ of plaintiffs, during the months of January, February, March, and a part of April, 1868, state whether the elevator was kept open and ready for business, as usual before that time, and whether or not business was carried on there as it was usually done before those months.

A. The elevator was kept open and ready for business as usual during those months, and the business was carried on the same as usual prior to those months. During those months, January, February, March, and part of April, 1868, the Illinois Central R. R. Co., delivered grain to be handled by the elavator in the same manner as said company usually delivered similar grain to the elevator to be handled prior to those months. The company paid for the handling of such grain. I think the payments were generally made by the agent.

Q. How were the payments made by the railroad company for the grain it delivered to the elevator, in February, March, and the fore part

of April, 1868; that is, who, on the part of the railroad company, made the payment, and to whom, on the part of the elevator company, was the payment made?

A. The payments were generally made by W. F. Blake, on the part of the R. R. co., to me, on the part of the plaintiffs.

59 DAVID G. SCOTT, for plaintiffs, testified as follows:

I was in plaintiffs' employ, at their elevator, in Dubuque, during 1863, 1864, and part of 1865, as book-keeper.

Q. Do you know the cost and expense of receiving and discharging grain at plaintiff's elevator, per bushel, during the average business per year? If yea, state.

A. It was very close to a mill and $\frac{3}{4}$ per bushel; a very trifle under that.

Cross-examination:

Q. Please state how you make the estimate giving all the elements in the computation and manner of calculation?

A. By taking the number of men employed, the engineer, weigh-masters, book-keeper, superintendent, cost of fuel, divide the number of bushels into that, and gives the cost of receiving. Cost of discharging by the same process. The $1\frac{3}{4}$ mills per bushel covers the expense of both receiving and discharging grain. My figures were made on the basis of currency.

Deposition of George G. Scott.

Was employed in plaintiffs' elevator, as book-keeper, during the latter part of April and during the months of May and June, 1868; kept books and made collections.

He then states the items of grain shipped through elevator. The total amounts to 93,114 bushels 9 pounds. The Illinois Central
60 paid for the handling of this grain at the end of each month, at the rate of one cent per bushel; a half cent per bushel was also received from the consignee. Witness made collections from Illinois Central R. R. Co. Some of the grain was shipped across the river and some of it down the river. Witness supposed it to be through-grain. It was consigned to Gibbs and Co., Lowrey, Hamilton, and various other parties doing business in Dubuque; thinks a majority of the grain went down the river. The business of the consignee was to care for the grain consigned for them at Dubuque. He means by through-grain, "grain placed in the elevator and kept there till the best market is found to which to ship and the cheapest route by which to ship it."

A. H. GIBBS, witness for plaintiffs, testified that he had the general supervision of the Dunlieth Elevator from 1859 to the 17th of March, 1866. That it cost the Dunlieth Elevator one mill and $\frac{4}{10}$ *for* a mill per bushel; which will cover everything as per *per* statement as follows:

When we use our regular force to handle sixty cars per day, 10 hours time, our average force was:

61 Six trimmers, $1.75 per day		$10 50
One engineer, 2.00	" "	2 00
One fireman, 1.75	" "	1 75
One bargeman, 2.00	" "	2 00
One watchman, 50.00 per month		1 55

One and a half tons of coal, $5.00	7 50
One half gallon of oil, 90c	45
One weighman, $60.00 mo	2 00
	25 85
Book-keeper	1 50
	27 35

It cost about the same amount to handle five or ten thousand bushels per day as to handle twenty. I don't think it ever increased the cost per bushel, for we had other work for the men to do, either sacking grain, for which we had extra compensation, handling lumber, or unloading coal for railroad company.

My business compelled me to be about the Dubuque Elevator almost every day. In 1864 I don't think they (the Dubuque Elevator) could have done it for much less than two mills per bushel; since 1865 I think that they could do it in plaintiffs' elevator for one and ¾ mills per bushel. I think I could do it for the last two years for one mill and ½ per bushel.

As to storage in Dunlieth Elevator, it ammounted or rather was equal to about one-half of the elevator fees, but from my knowledge of the Dubuque Elevator business, would say that the storage amounted
62 to more than in the Dunleith elevator. I have no personal knowledge of what was received for storage of grain in Dubuque Elevator.

"Have you ever seen bills come over with extra charges for storage?"
"I have, and paid a great many of them."

McLAUGHLIN.

OWEN McLAUGHLIN was superintendent of the Dubuque Elevator from October, 1864, to the middle of November, 1867. In answer to the question whether he knows the cost of handling grain he answers: "Yes, I do know; one and ¾ mills per bushel."

"What is the ordinary cost and expense of handling, receiving, and discharging grain at plaintiffs' elevator, per bushel, where the amount so handled and received and discharged is from two to three million bushels per year?

A. One and ¾ mills per bushel.

Cross-examination:

How do you make your estimate?

"By taking the actual amount handled or that can be handled by a certain number of men in a certain specified time, 10 hours, and dividing the total expense of those 10 hours by the total number of bushels handled within the same time."

I had general charge of the business of Richmond and Jackson. My duties were to know what amount of grain was most likely to come in on the railroad on any day, or per day, as it was my duty on every
63 day to provide men sufficient to handle that amount of grain; also to see that the different men about the place performed their labor and their duties; also, to see that the engineer had up steam when I wanted and to direct him when to shut off steam; also, to contract for the performance of other work, such as the shelling of corn, the loading of boats, the reweighing of grain. The expense of shelling corn and the loading of boats and reweighing of grain is not considered

as expense of handling of grain, as answered above by me. The expense as stated above, one and ¾ mills per bushel, is the expense of merely receiving and delivering out the grain from the railroad. I was also my duty to buy and sell salt and waterlime. I superintended their whole business there; sometimes hired the men out to do other work when I did not need them in the elevator.

Q. Where do you get your data to make up this expense account; from the books or from your knowledge?

A. I get it from my own personal knowledge, and from my own memorandum-book, which I daily carried. I kept an account of every day's transactions in that book. It was a kind of diary. I had, besides, a time-book, that I kept the men's time in.

(Objection was taken to stating what was in these books.)

64 Q. State, specifically, what accounts you did keep in these books?

A. The labor and the fuel. That is all I kept on the diary, including engineer and weigh-master. The time-book had the hours and wages.

Q. State what other expenses you include in the estimate of one and three-quarter mills?

A. The wages of the men, the engineer, weigh-master, book-keeper, and one-half of my own services, the fuel, and oil. I believe that is all. I kept all the expense.

I kept account of all this expense myself, except the oil. I bought that and examined the bills. When I was positive what the bill was, I made my estimate from recollection. When I was not, I referred to the bill.

Q. Are the expenses which you have enumerated all the expenses which you have taken into account in making your estimate?

A. They are.

The capacity of the elevator for receiving and handling and discharging grain is 26,664 bushels in ten hours, a few bushels more or less. I arrive at this knowledge from actual experience in knowing how many bushels could or has been received in five or ten hours. I have tried it with a watch for five consecutive hours.

Q. What did you pay the men included in your estimate?

A. The book-keeper $3.00 per day; the engineer 2.90; one weigh-master $2.90; the other weigh-master $2 per day; and laborers each $2 per day.

65 Q. Were the men employed all the time in handling the grain that came from the railroad?

A. They were not. The time that I included in this estimate they were. At the time I made this estimate, there were ten laborers at the cars and two for discharging. The whole wages of the men, enumerated for the time included in the estimate, are charged to the grain coming over the railroad. I have not the estimate that I made; I have a copy of it.

Q. Can you produce it?

A. I can't say whether I can or not. If I have it at all, it is on the back of private papers. It is a matter of my own and can't compel me to copy it. I made this estimate when I had no knowledge that there would be a suit, or that I would be brought up on it at all.

Q. Did you collect the money due the elevator at the time you was superintendent?

A. Some of it.

Discharging grain is delivering it from the elevator into boats or other vehicles. The railroad company paid the expenses of discharging

grain. They had no special charge for discharging grain. Discharging and receiving were both included as one. Any one receiving is expected to deliver it, else they must expect to steal it themselves. It did not arrive in equal proportions. The most came in Septem-
66 ber, October, and November. As a general thing it was not always so. I think one-half (of the year's grain) came in those months, as near as I can state. Discharging grain is letting it run into boats or other vehicles. What I referred to by loading it into boats before, was the distribution of the grain in the boat. Moving the boat and keeping her from getting aground, turning her around, and many other little things; these were the duties of the steamboat company; never made a contract for such service by the bushel; charged variously by the boat, for superintending the movement; sometimes forty, sometimes fifty cents per hour for the men, and when I loaded a boat in that way at fifty cents per hour for the men, I charged from five to eight dollars, variously, for seeing the boat attended to. These expenses were paid by each boat. When the grain was transferred across the river for the railroad company, by boat or barge, none of these charges were made. These charges were made to steamboats, that had no connection with either railroad.

Direct examination resumed:

Witness states that the reweighing, previously referred to, is reweighing parties buying grain in sacks, who are not satisfied with the weighing of the railroad company. In such cases the seller pays for weighing one-half cent per bushel. The expenses of re-
67 weighing grain, when discharged from the elevator, is included in the witnesses estimate, of one and three-quarter mills per bushel, as the cost of receiving, handling, and discharging grain.

The shelling of corn and sacking of grain in an elevator forms no part of receiving, handling, and discharging grain in an elevator. Such services were performed for the accommodation of the owners of such grain, and was paid for by them.

During twelve months—part of 1864 and 1865—the receipts from sacking amounted to over $6,000. The other years, 1865, 1866, 1867, it was not as much, but was a large business. The shelling of corn was also a large business. The amount of profit was almost as much as was received for shelling, because the cobs were worth fully as much as cost of shelling. The charge for shelling was from three to four cents per bushel; the profit for shelling was four cents per bushel; the charge for sacking was two cents per bushel. Witness thinks three-quarters of a cent per bushel would have paid expenses of sacking.

The reweighing of all grain going out of the elevator into the barges of defendant, or any others, is included in the estimate of one and three-quarter mills per bushel, as above.

68 The elevator of plaintiffs can be operated in the night as well as day time. The cost would be a trifle less to operate night and day than day only. The cost of receiving, handling, and discharging grain at seasons of the year when large quantities come in, is very nearly the same as at those seasons when small quantities come in. It might be a trifle higher when small quantities come in. The only difference in expense is that it is necessary to get up steam for a small quantity, say 20 cars, as for a large quantity. The hands were employed in proportion to the quantity of grain coming in at different seasons of the year. The expenses were reduced, as nearly as the witness (he was the superintendent) could apportion it, in proportion to the reduction in the quantity of grain arriving.

Did any outside business in salt and cement?

The salt varied from nine to fourteen thousand barrels per annum; the cement from 1,800 to 2,000. The men were employed part of the time rolling salt-barrels and cement-barrels, running boats, shelling corn, sacking grain; sometimes did work for the railroad company, loading cars with ties, and sometimes were hired to the railroad company at a profit, to clear off wrecks. The elevator sometimes receive' grain from the city of Dubuque, hauled down in wagons, with which the railroad company had nothing to do and paid nothing for.

69 The amount received for storage when the elevator was allowed to handle the entire through-grain, was as much as five or six thousand dollars per annum. Witness cannot answer more definitely; cannot say who paid it. Witness produces copy of the calculation of the expenses of receiving, handling, and discharging grain above referred to, which is attached to his deposition, and is as follows:

10 car-men		$20 00
2 bagging-men		4 00
1 weigh-master		2 00
1 do.		2 90
1 engineer		2 90
1 book-keeper		3 00
Fuel		10 00
Oil		12
Self, half time		1 50
Divide by	26,664	$46 42
		.00175

RICHMOND.

A. W. RICHMOND testified that he is engaged in elevator business in Dubuque; that John Jackson, plaintiff, prior to 1867, was a partner with him in said business, and in the salt-trade, and had a share in the profits of the elevator, but had no salary. He had one-half of all profits made in the salt-business, and all outside business; that witness, at times, prior to that date, had rendered services in operating the elevator; that whichever of plaintiffs was at the elevator, managed

70 the business. Mr. Jackson was there more than witness. Both of them kept a general oversight over the business. Part of the time witness assisted in the office. Mr. Jackson left the State of Iowa in 1867, and has resided at Lockport, N. Y., since April, 1868. There are some expenses arising from the wear and tear of the elevator from use.

Q. Is the elevator worth as much without the handling of through-grain as with it?

A. The elevator is not worth as much when we have only the local grain to handle as it is when we had through grain also.

Cross-examination:

Q. When you had the handling of through and local grain, what was the cost of handling, say from 1864 to 1868?

(Objected to because not cross-examination.)

A. I think it would run from a mill and five-eight's to a mill and seven-eight's a bushel, as near as I can figure it.

Q. Was there a difference in the cost of handling grain in 1864 and 1865, as compared with 1868, 1869, 1870; and if so, how much?

A. There was a difference. I have never figured exactly the difference, but can do so. (After making a computation,) in 1864 and 1865, it cost one mill and $\frac{72}{100}$; in 1868, and 1869, and 1870, it cost one mill and $\frac{50}{100}$, as closely as I can figure it.

Q. "Do you know the price of gold in 1864?"

71 A. "The highest price of gold in 1864 was 2.85; the average price of gold for that year, 1.04 premium."

Q. What was the price of gold in 1868, 1869, and 1870?

A. "Much lower than the former years."

Witness states that, from , 1864, to November 1st, 1867, the entire charge of the elevator for receiving and discharging grain was one cent per bushel, except for the term of 1866 and 1867; that permission was had of the railroad company to charge more. Then it was one cent and a half. During such term as we charged one cent and a half, storage was free for thirty days. The company had required a good many concessions on our part. We, at the request of the shippers and officers of the road here, requested the board of directors in New York, in view of these concessions, to give us more on this contract, proposing, if they would do so, to give them storage thirty days free. They granted the request, allowing us to charge two cents a bushel on the grain, they to pay one cent and the shipper the other; we making out their waybills, advancing the freight, and collecting of the shipper when the grain went forward. We never charged nor collected over one and one-half cents per bushel, though the resolution allowed us two cents per bushel.

("Witness produced copies of said resolutions passed by the board of directors of the D. and S. C. R. R. Co., 7th September, 1864, and February 10th, 1866, as follows:

72 "Copy of a resolution passed at a meeting of the board of directors of the D. and S. C. R. R. Co., held in New York, 7th of September, 1864:

"*Resolved*, That the president be authorized to raise the price of raising and handling grain at Dubuque to one and a half cents per bushel, for one year, provided the contractors, Messrs. Richmond and Jackson, will increase the facilities for storing thirty thousand bushels this fall.

(Signed) "A. B. BRETON,
"*Sec'y pro tem.*"

"Copy of a resolution passed by the board of directors of the Dubuque and Sioux City Railroad Company, at a meeting held in New York, February 10, 1866:

"*Resolved*, That Messrs Richmond and Jackson may, during the pleasure of the board, charge two cents per bushel for handling grain: one cent to be paid by the company, and one cent to follow the grain; provided that Richmond and Jackson shall pay the freight charge as soon as the grain is delivered to the elevator; and provided, also, that they shall store thirty days free of charge, in accordance with the prayer of the petition of the grain-dealers. Carried.

"C. H. BOOTH, *Secretary.*"

The concessions on our part, referred to, required by the company, were, in behalf of the shippers, that the storage should be changed,
73 and that they have 30 days' free storage instead of ten. They also wanted we should take the bill of grain coming in, and, as they might sell or change the grain from one to another, or ship to different points from the original destination, that we should change these

consignments for them. When the grain came in we paid the charges, and let the charges follow the grain or collected of the shipper when we got ready to ship. This was during the time we gave 30 days' storage. When we took the elevator I was instructed, as was Mr. Jackson, to do anything for this railroad-company that they might request as far as making any temporary loans of money to them, or, in fact, doing anything of advantage to the road, with a view to our interests and to help the road. Mr. Dean Richmond took $100,000 in 7 per cent. bonds of this road and $20,000 in bonds of the Cedar Falls and Minnesota Railroad; also, some smaller amounts at different times at the request of Richmond and Jackson. He paid par at least for them. We at different times loaned money to this road, and at one time to the amount of $10,000 in summer of 1865, when the road was badly injured by a storm, and the money was needed for repairs. We also collected their freight at different times for them, and in any way and every way worked for their interests as well as our own. The resolution connected with the
74 letter was written in 1864. They requested, as had the officers here before them, that we should make any addition of 30,000 capacity in bushels. We complied with this request by building a warehouse and store-house connected with the elevator of the capacity of 40,000 bushels.

Q. "In the letters of Richmond and Jackson, in August, 1864, and October 2d, 1865, asking an advance of one-half cent on a bushel, you speak of the expense of handling grain. State how you happened to write those letters, and whether the statement as to the cost of handling grain is correct."

A. "These letters were written without any minuet calculation as to the price it cost to handle grain, but with a view to get the company to make our contract as good a bargain as it was at the time it was made. The tariff and business was based and carried on to correspond with the rise in gold. We also thought the favors we had shown the company, lending them money, &c., entitled us to this addition. We did it by the advice of the officers here."

Q. "About weighing grain and the accuracy of your scales at the elevator, state all you know."

A. "We weighed on Fairbanks' scales. I saw these scales inspected personally twice. At the time I saw them inspected, they were
75 pronounced very correct by the inspector. They were inspected at other times.

The weigh-master never, to my knowledge, made a mistake. I mean the man who weighed in. In weighing out there were two mistakes made, which were rectified as soon as we were notified of it. The grain was inspected and classified by the inspector appointed by the mayor and council and board of trade. We placed it in different bins after getting his inspection of the grade, keeping each grade by itself. The company had a set of track-scales at Dubuque. Sometimes grain was weighed at both places. Sometimes it would vary a little in favor of their scales; most generally in favor of the elevator scales. I do not think, the way I have seen them weigh cars when they were coupled in the train, their system of weighing could be as correct as ours. The largest discrepancy I ever knew was in a car-load of Gibbs and Coates, which weighed between 700 and 800 pounds more by the elevator scales. They generally were not a great way apart. I have understood the shippers had the privilege of weighing on either scales.

(It was agreed that Mr. Crane's objection to the first question in cross-examination should apply to all the foregoing testimony.)

Examined by Mr. Crane for defendants in cross-examination:

This estimate is for 1864 and 1865; part of 1866.

76	Ten laboring men, at $1.75 per day	$17 50
	One weigh-master	2 00
	Second weigh-master	2 00
	Engineer	2 50
	Watchman	1 25
	Wood and oil	10 00
		$35 25

With that force of men we could receive and discharge 22,000 bushels per day, which, I figure, would make cost of one mill and $\frac{7}{10}$ a bushel. Make use of the same elements, but change in the prices of fuel and labor. Reduce it to 33.14 per day total. Divide 22,000 gives 1 mill $\frac{57}{100}$.

From September, 1864, till September or October, 1865, the company paid 1½ cents per bushel for handling grain. During that time shippers were not allowed to store free for thirty days.

Q. Did you charge shippers one-half cent per bushel for handling grain from September, 1865, till February 10th, 1866, the date of the resolution referred to?

A. When we made private contracts with them to do their business we did; when we did not make such contracts we did not.

Witness states that the advice of the officers referred to in regard to the letters written to New York requesting the company to allow
77 the elevator to increase their charges was the advice of Mr. Platt Smith, Mr. H. L. Stout, and Mr. H. C. Booth.

They told us, as near as I can recollect, they thought it was no more than just and right, as we had done considerable for the company, that they should give us this additional one-half cent; that our proper way would be to lay it before the board of directors at New York.

Witness "don't know" that he has personally made comparisons between the company's track-scales and the elevator-scales more than two or three times. Was engaged in livery business in the spring of 1867. The elevator cost from $30,000 to $31,000.

Re-examined by Mr. Smith:

Mr. L. W. McMaster has the personal supervision of the livery-stable. The storage in the elevator has amounted to between $6,000 and $7,000 in one year. Mr. Jackson and witness at different times notified shippers privately and witness publicly, at the board-of-trade rooms, that they could at any time appoint a weigh-master to weigh the grain both in and out of the elevator, and witness made a personal request that they would do so. The inspector was not under the control of plaintiffs.

(It was agreed that the deposition of this witness should be read in evidence, subject to any objection as to irrelevancy, incompetency, and immateriality.)

78 The defendants then introduced in evidence the following true copy of the pleadings, record, and proceeding of the suit commenced by the plaintiffs against the defendants, on the 23d of January, 1868, including Exhibits "A," "B," and "C," which are the same exhibits referred to in plaintiff's supplemental petition herein.

[The pleadings and Exhibits "A," "B," "C," here offered in evidence,

will be found on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, & 21 of this transcript, , and the record and proceedings above referred to as offered in evidence, will be found on page 43 of this transcript , being the proceeding of the district court under the procedendo of the Supreme Court.]

Defendants then introduced the following letters:

DUBUQUE, *August* 2, 1864.

To the President of the D. and S. C. R. R. Co.

DEAR SIR: Owing to the depreciation in currency and the high price of labor and fuel, and in fact all other expenses connected with our business, we take the liberty of asking you to allow us an adequate compensation for handling the grain brought in on your road. We are at present paying double for labor to handle the grain, and more than double for wood, and all other expenses in proportion, and we find that at the present rates allowed us we can't do more than come out even, taken the year round. We trust, therefore, that as long as our expenses
79 are so great you will allow us a compensation proportionate to them.

Respectfully, yours,

RICHMOND AND JACKSON.

DUBUQUE, *October* 2, 1865.

To the president and directors of the D. and S. C. R. R. Co.

GENTS: Owing to the depreciation of our currency, and, as a consequence, the high price of labor, wood, &c., necessary to carry out the contract of receiving and delivering the grain from your road, we find that one cent per bushel, as per contract, is not enough to pay the expenses of handling the grain. You are fully aware that the expenses of the same business now are more than double what they were in 1861. Common labor was then 75 c'ts per day; now it is $1.75 to $2.00. Clerk hire was then $500.00, while now it is $1,000.00. Engineers and weigh-masters' wages in the same proportion. Wood, which is a large item in the business, was then $2.60 to $2.75; now it $5.00 to $6.00 per cord. Last year your honorable board added one-half cent per bushel for one year, as per resolution passed by you. We would ask you to extend this favor until wood and labor are reduced to some reasonable price.

This request is but reasonable and just, under the circumstances, when you consider the change that has taken place since the contract was entered into. We notice that you have raised the freight-tariff since 1861, when it was 14 c'ts per hundred from Cedar Falls.
80 It is now 26 c'ts per hundred pounds. This large increase in the freight-tariff is caused by the same circumstances which led us to ask this favor, which we trust you will cheerfully grant.

RICHMOND AND JACKSON.

W. F. BLAKE, for defendants, testified:

I am freight-agent of the Illinois R. R. Co., at Dubuque, Iowa, and have been such agent since October 1st, 1867, on which day that company took possession of and commenced to operate the Dubuque and Sioux City Railroad. About November 1st, 1867, said company commenced to transfer grain in bulk in cars across the river at Dubuque. About November 1st, 1867, the company transferred cars by boats, and ceased to give to the plaintiffs the handling of grain coming from the west on said railroad, consigned to points beyond Dubuque. The grain com

ing in over said road consigned to points beyond Dubuque was transferred across the river, during the winter of 1867 and 8, by teams. It was taken directly from the cars on the Dubuque side and carried over in teams. Subsequent to that winter, the grain so consigned over said road was transferred by said company by the boats and by bridge—by boats till December 22, 1866, and after that by bridge.

Q. State whether the said company, since about November 1, 1867, have given to plaintiffs the handling of any grain coming in ove
81 said road and consigned to points beyond Dubuque.

A. No; except one car which was put in the elevator by mistake. It was done by yardmen about December 12, 1867. I paid for handling the grain out of my own pocket.

Q. State how the grain passing through Dubuque to other points was consigned with reference to the Dubuque Elevator, subsequent to the spring of 1868?

A. Notation made on the way bills not to go through the Dubuque Elevator. The notation was in writing. I suppose the company ordered that notation to be made. I never saw the order.

Q. Did you pay Richmond and Jackson any bills for handling grain during the latter part of the winter or spring of 1868?

A. I think we paid bills for handling Dubuque grain—grain that was consigned to Dubuque.

Q. Was the amount that went into the elevator after January 23, 1868, small or great?

A. I think it was a small amount. I mean compared with the former business, or amount that came in over the road.

Q. Do small amounts continue to come in since that time, that go to the elevator?

A. Yes; local grain—Dubuque grain. The elevator unloads—handles such grain.

Q. Were you directed at any time by the Illinois Central R. R.
82 Co. not to deliver through-grain to plaintiffs' elevator; and, if so, by whom?

A. I don't recollect that I was directed not to deliver grain to them; but I was directed to put cars containing through-grain, going beyond Dubuque, on the boats. I don't recollect whether I was so directed by Mr. Hughitt, the general superintendent of the company, or Mr. Farley, the division superintendent.

Q. What do you mean by through-grain?

A. Grain consigned by shipper to Chicago, or points east of Chicago.

Q. Was such grain sometimes consigned to the care of some person at Dubuque?

A. There was, previous to the Illinois Central leasing the Dubuque and Sioux City Railroad. I think none after that—I mean after October 1, 1867, the time they commenced operating under the lease.

Q. Did you pay Richmond and Jackson, in behalf of the company, for handling any through-grain after Nov., 1867?

A. I do not recollect of paying any for grain handled after Nov. 1, 1867. I might have paid for grain handled prior to Nov. 1st, 1867.

Q. State whether the grain given to the elevator, after Jan. 23, 1868, was or was not through-grain.

A. It was not through-grain.

Q. In answer to int. No. 7, by Mr. Smith, you say "that small amounts of grain continued to go to the elevator." State whether the grain there referred to was through-grain or not; and whether
83 the company paid the elevator charges on it or not.

A. It was not through grain. The co. does not pay the elevator charges on it. I suppose the consignees do. It is used as any warehouse—the consignees pay me the freight-bills the same as though it was delivered from the company's warehouse.

Q. Were you directed by any one to transfer the through-grain across the river, after the closing of navigation in fall of 1867. If so, by whom and how?

A. I was directed by Mr. Hughitt, the gen'l sup't, or by Mr. Farley, the division sup't. I was directed to deliver it to Parker and Lenehan's teams.

Q. Did you transfer it again by boats in the summer of 1868; and if so, by whose direction?

A. I did, by boats. No one gave me directions. When navigation opened the boat commenced running. I put cars on to be transferred. I continued to do so under the former instructions. I paid the elevator for handling the car of grain put in there by mistake, because I considered myself personally responsible to do so, as I considered the company had nothing to do with it.

Cross-examination:

My means of knowledge how grain is consigned is by looking at the way-bills—they are blank forms filled in with writing, partly printed and partly written. My means of knowledge that the grain which
84 was delivered by the Illinois Central R. R. Co. to plaintiffs' elevator, after Jan. 23, 1868, was not through-grain, is because it was consigned to Dubuque and parties residing in Dubuque. *I* means of knowledge that it was consigned to Dubuque is by the way-bills—these way-bills are in print and writing. I have not any knowledge of what was through-grain and what was local grain, except from the way-bills.

Q. Did the Illinois Central R. R. Co. pay the plaintiffs for the handling of any grain in their elevator after the 23d day of January, 1868; and, if so, up to what time did the' pay?

A. They did, for the handling of Dubuque grain, after Jan. 23, 1868, perhaps till June or July, 1868.

Q. How often was the R. R. co. accustomed to pay for handling of grain in elevator, monthly, daily, or weekly, after Jan. 23, 1868?

A. Monthly.

Q. What is your means of knowledge that the grain, for the handling of which they paid after Jan. 23, 1868, was Dubuque grain, as you term it?

A. By its being consigned on the way-bills to parties residing in Dubuque.

W. F. Blake, recalled, testified as follows:

Q. State whether you have examined the way-bills of the grain given to the elevator to be handled, subsequent to November 1st, 1867. If so, state whether they were uniform in the manner in which they
85 were made out, so far as the destination of the grain was concerned.

A. I have examined them, and they were uniform in manner.

If you have in your possession blank way-bills, please produce specimens of the same, and explain how they were filled out.

A. The specimens produced by me, and which I have filled out, show the manner in which real way-bills were filled out—show how the way-bills asked about were filled out.

The way-bills produced by the witness are as follows:

ILLINOIS CENTRAL RAILROAD.

No. 4.] NOV. 7th, 1867.

Shipper.	Consignee.	Destination.	No. of p'k'g.	De'cript. of art.	We'gh.	Rate per 100 lbs.	Freight unp'd.
Turner and Co.	G. B. Hamilton.	Dubuque.....	1	Car of wheat	20,000	25	50,000

(Endorsed:) Illinois Central Railroad way-bill, No. 7. From Waverly to Dubuque. No. of car, 3786. November 7th, 1867.

DUBUQUE SOUTHWESTERN RAILROAD.

No. of way-bill, 10.] NOVEMBER 10TH, 1867.

Shipper.	Consignee.	Destination.	Description of articles.	W'ght.	Rate per 100 lbs.	Freight unpaid.
Twogood Bro.	Gibbs & Coate ..	Dubuque...	1 car wheat.	20,000	16	32,000

(Endorsed:) Anamosa to Dubuque. Car 62, W.

Q. How many way-bills were made out for each car-load generally?

A. One; seldom two; always one, at least.

Q. State whether the company gave the elevator the handling
86 of any Dubuque or local grain after November 1st, 1867, and January 23d, 1868?

A. They did.

Q. About what amount of grain went up the switch from the elevator to the warehouse on the levee, in Dubuque, for which the railroad company paid the elevator company one cent per bushel, in the years 1864, 1865, and 1866; I mean what amount went up in those years?

A. I estimate the amount to be about 600,000 bushels. The Illinois Central R. R. Co. paid for handling the same. Said grain was delivered to the elevator by direction of the consignees. The local grain, or Dubuque grain, was delivered to the elevator, subsequent to January 23d, 1868, by direction of the consignees.

Q. State whether you delivered to the elevator, subsequent to November 1st, 1867, any grain consigned to points beyond Dubuque, by the way-bills accompanying the same, coming in on the road from west of Dubuque?

A. No; except one car, December 12, 1867, as I explained in my former testimony.

Q. What means have you of knowing the amount, or making the estimate of the grain that went up to those warehouses?

A. By taking from the statistics the total amount of grain received at Dubuque, and deducting the amount which Richard Scott states the elevator had on hand.

J. P. FARLEY, superintendent, and witness for defendants, tes-
87 tifies that the Illinois Central took possession of the Dubuque and Sioux City road October 1st, 1867, and have run it since. During October grain passed through elevator; after that, commencing with November, it was transferred, by running the cars on to a ferry-boat, till the close of navigation in December. After the close of navigation we sacked the grain, and hauled it over on sleds and wagons till the close of that winter. Resumed crossing on ferry in spring until the bridge was done, in December, 1868; have crossed our cars over the bridge ever since. The ferry-boat was managed by Mr. Beck, agent of

the Illinois Central Railroad Company, at Dunleith. Mr. Blake managed the transfer on this side of the river. Mr. Blake had his directions from me to change the mode of transfer by boats. I directed him to make the transfer without putting the grain in the elevator. The cars were put on the boats without breaking bulk.

Q. Did these directions apply to all through-grain?

A. They did, to the best of my recollection. We took grain right along, in competition with the boats, and always have done it, to Chicago, Cairo, St. Louis, winter or summer, and I have not, since November 1st, 1867, knowing, authorized, on behalf of the company, any grain to be handled by elevator, consigned to points beyond Dubuque.

Q. State what complaints, if any, were made by shippers in
88 reference to transferring grain through the elevator.

A. I think that every shipper on the line of our railroad was dissatisfied with his weights and his inspection of grain at the Dubuque Elevator. Had more trouble with that than all the rest put together. The nature of the complaints was universal shortage. They were also dissatisfied with the inspection. I did not know as the elevator had anything to do with that. The inspector was appointed by the city council. They, the shippers, claimed that incompetent men had been appointed to inspect the grain. The shippers wanted to receive their own grain in the market, in Chicago. They thought there was unfair dealing in grading and mixing, in the Dubuque Elevator. It cost to transfer car-loads of wheat, through the elevator, across the river—I mean to get a car-load of three hundred and forty bushels out of the cars on this side into the cars of the other side of the river—$16.20, prior to Nov. 1st, 1867. It cost to get a car-load of oats across in the same way, prior to Nov. 1st, 1867, $25. Since that time, it has been transferred at $2 a car till the bridge was completed. We have transferred on bridge, for the year 1869, at the cost of about $5.00 per car. We commenced to transfer across the bridge on the 22d day of Dec., 1868. I had a conversation with Mr. Jackson and Platt Smith—
89 different talks, in 1866, about the work of handling grain through the elevator. Previous to 1866, the Dubuque and Sioux City , by vote of their board of directors, had allowed them a cent and one-half per bushel. Mr. Jackson wanted that price continued, and we refused to do it, and this is the way the conversation came up. When we declined to pay them the cent and one-half, they charged the half cent to the shipper. They said they could not afford to handle it for one cent per bushel. I did issue an order to station-agents to have the shippers designate on way-bills whether they wanted the grain to go through the elevator or not. I left the shippers to their own choice. The order was issued immediately after the trial of the first case between the parties to this suit, in May or June, 1868. Mr. Blake received the way-bills from the different stations. The way-bills themselves determine the destination of the grain. If destined for points beyond Dubuque, he forwarded across the river by the means we had for transporting across. If shipped to Dubuque, he delivered at the place required by each shipper. Some of the shippers, or some of the consignees, more properly, wished to sack their grain in the yards, and others wished the cars pushed up to the warehouses, and others wished it put into the Dubuque Elevator. The agent at Dubuque was under
90 my charge, as superintendent and manager of the road. The elevator is located on the grounds of the company, between our warehouse and the Mississippi River, on the depot grounds in Dubuque. My written order to station-agents was to all agents.

The following is a copy:

"DUBUQUE, *March* 21, 1868.

"C. M. DURHAM, *Independence:*

"Hereafter, in shipping grain to points east of Dubuque, you will note on both way-bill and shipper's receipt as follows, viz:

"'Not to go through elevator at Dubuque;' and have shipper sign his name on the way-bill, as per enclosed form. This we wish him to do voluntarily, showing it to be his own choice.

"J. P. FARLEY, *Sup't.*"

Cross-examination:

Q. Did you in any wise do anything to cause shippers to direct the grain not to go through the elevator?

A. Not to my recollection.

Q. Did you not give station-agents or other persons on the line of the road, to understand that you or your company wanted the grain shipped with directions not to go through the elevator?

A. I don't think any instructions or solicitations were made of that character. They did not want any instructions or solicitations to that effect. Shippers were only too much rejoiced to know that they
91 could get their grain through to Chicago, without going into the elevator at Dubuque, and mixing with other grain. As a matter of course, about that time, the Illinois Central Railroad reduced their rates of transportation in proportion to the amount saved between shipping through the elevator and the means which they had adopted, by crossing on the ferry-boat, and I have but little doubt, if anything was said on the subject at all, shippers were given to understand their grain would go to Chicago quicker, without mixing, and at a less rate, than if it went through the elevator. I don't think that I ever talked with a shipper in my life about it; I don't recollect it.

Q. What do you mean by the terms through-grain, as used by you in your examination-in-chief?

A. I mean grain destined to points beyond our line of road, or the State of Iowa, or, I should say, beyond Dubuque. Grain consigned to parties in Dubuque is not through-grain at all.

Q. At the time you say complaints were made by shippers, did not the plaintiffs to let the railroad company, shippers, and consignees appoint their own weigher at the elevator?

A. They did. I do not think the shortage occur'ed by leaking from the cars, from the fact that we have heard no complaints since we quit shipping through the elevator. I know nothing about the
92 elevator at Dunleith. When the wheat arrived at Dubuque, it was weighed by the Dubuque Elevator Company. The shortage in that elevator is the one I am talking about.

Q. Did the railroad company or shippers or consignees ever accept or act upon the offer made by plaintiffs, for them to appoint a weigher of their own, at the elevator?

A. They did on one or two occasions, to my knowledge. I do not know whether any oftener or not.

Q. Were you present when any grain was weighed at the elevator?

A. I don't think I ever saw a draught of grain weighed at the elevator.

Q. Did not the railroad company have their own weigher at the elevator for months, with the permission of the plaintiffs, and did he not continue there until withdrawn by the company?

A. Yes, sir. Could not tell how many months, but it was more than

a month. To satisfy the people, with Gen. Jackson's consent, we sent a weigher there; he continued there till withdrawn by the company.

Q. Do not all elevators, of which you have any knowledge, mix grain of the like grade belonging to different shippers or consignees?

A. They do not on the line of our road, but they do in Chicago, Dunleith and Dubuque, as I understand it. I have no recollection of
93 any grain being shipped through elevator after 23d day of January, 1868.

The freight agent at Dubuque, receives the way-bills of all grain, either through or local, and keeps a record of every car, its number, and what is in it, that comes to Dubuque and goes east from Dubuque. This has always been the case. He forwards the way-bills of the through-grain with the cars.

On account of the general complaint, I got parties to weigh in their wheat on the track, and in some instances we reweighed it on our track-scales in Dubuque, the result was a shortage in the elevator. In one car I recollect a shortage of ten bushels, about six hundred pounds.

Q. State whether the Illinois Central permitted shippers to consign grain to points beyond Dubuque, to care of persons in Dubuque?

A. No, sir.

Q. What was the result of sending a weigher to the elevator, by the shipper, or consignee, or railroad company?

A. No satisfactory result.

Q. What are the evils connected with mixing grain, as it is called, in elevators?

A. A cause of complaint, as I understand it, is the opportunity for fraud in mixing light wheat with heavy. I did not see it weighed by the shippers on the track. I know nothing about the weight by
94 the shippers, further than their statements which they sent me.

Q. Did you ever see any grain weighed on your track-scales in Dubuque, and afterwards see the same grain weighed on the scales in the elevator?

A. No, sir. Those things are all done through agents.

Q. Have you any personal knowledge of there being any difference between the weight of grain by the scales of the elevator and any other scales?

A. No, sir. Personally, I never attend to that kind of work.

Q. Is your statement that you recollect of a shortage of ten bushels in one car founded on personal knowledge or report?

A. When this car was shipped from Iowa Falls, by Mr. Buttolph, he wrote me the number of the car that he had personally weighed in so much wheat. I ordered Mr. Blake to have it weighed on our track-scales. He did so, and reported the weight to me. Our weight and Mr. Buttolph varied a little more than a bushel. It was put in the elevator as other grain was, without any instructions, and the weight was returned to Mr. Blake about ten bushels short of Mr. Buttolph's weight. This is all the knowledge I have of any sort about this car.

Q. Was the weight returned to Mr. Blake in writing or verbally?

A. I think all the returns of weight were in writing. I have
95 no personal knowledge of it at all.

Q. In answer to the third direct question resumed, you say there was no satisfactory result. Explain what you mean.

A. Well, I mean that the shortage was still complained of. The shippers said our weigher was bought up or scales wrong. I did this to pacify them. Loomis, of Manchester; Moore and Gilbert, of Waterloo; Buttolph and Smith, of Iowa Falls; Holt and Hunt, of Waverly, I believe, made the most fuss about it.

Q. When these men complained that your weigher was bought up, did you appoint another weigher in his place?

No, sir; I am not prepared to say what privileges the shippers had. Mr. Jackson told me I might have a weigher there; never refused me at all.

Don't know what kind of scales the elevator had. Did not examine the scales. Did not think myself competent.

The charges were against the men employed by the elevator, McLaughlin and Scott.

GEO. YOUNG, for plaintiffs, testified as follows:

Was superintendent of the Dubuque and Sioux City Railroad from 1863, to 1866. In the year of 1864, probably 140 to 175 cars went up to the warehouses on the switch; am not aware that they paid for any in 1865, or 1866, or after the "L" part of the elevator went up; in consequence of some arrangement between Jackson and the company.

96 The "L" part of the elevator was finished in December, 1864.

Q. At the time you were given orders to pay the one cent a bushel, that went up to the levee switch, by whose orders was it done, and what position did he occupy in connection with the Dubuque and Sioux City Railroad?

A. It was by the orders of Mr. Platt Smith; he was either vice-president *and* president, I cannot now remember. I recognized him as the executive officer here. He was attorney of the company.

Q. Was it for all the grain that went up the switch, or for grain destined beyond Dubuque?

A. It was for grain destined for points beyond Dubuque.

Q. State whether, when you were superintendent, you notified the shippers that they could have their grain weighed on the track-scales. If so, state all you know and did about the matter?

A. I notified the shippers that if they wished to have the grain weighed on the railroad company's scales, in the yard, they could weigh the car before it went into the elevator; they could weigh the car when it came out of the elevator, empty, and they would test the scales of the elevator by the scales of the company, which were Fairbanks'. They might go up town and weigh themselves and then come down and weigh on the railroad-scales. Some did so, and found the railroad-scales correct. I am not aware but what the elevator-scales

97 gave as much weight as the railroad-scales did. The great bulk of the grain that was shipped up the *the* switch, in 1864, went to points beyond Dubuque.

Q. Will you look at these bills and tell whether, according to the usual way of making out bills, these bills cover consignments through or beyond Dubuque?

Witness examines and looks at two papers, marked "G" and "H," and annexed to deposition.

"G" is as follows:

OCTOBER 12, 1867.

L. N. Gibbs and Co., Chicago, (care Lowrey Elevator,) to Dubuque and Sioux City R. R. Co., Dr.

For freight from A. Lusch, Waterloo.

No. of car, 38. 329. 19 bushels of wheat, more or less, weight, 19,750—$47.40

Received payment for company.

W. F. BLAKE, *Agent.*

"H."

OCT, 18, 1867.

Abbott, Field & Co., Chicago, (care H. Lowrey, Dub. Elevator,) to Dubuque and Sioux City R. R. Co., Dr.

For freight from J. Pratt, Janesville,

No. car, 286. 361,30 bushels wheat, more or less, weight, 21,691—$52 06
1 80
52

Charges..... $54 38

Received payment for the company.

BLAKE.

98 A. By special arrangements with commission-merchants in Dubuque, grain from any point on the Sioux City Road was consigned to Chicago, in care of some person or commission-merchant in Dubuque. If the grain was consigned to Chicago, the Sioux City Railroad Company allowed the commission-merchant to alter the consignment, and have it consigned to some other market, when the market was more favorable for the shipper. In such cases, bills, such as are now shown to me, were made out.

Cross-examined:

I mean to say that after the completion of the "L" part of the elevator, the company paid no bills for cars going up the levee under my signature. I do not know whether the general manager, Mr. Warnock, did or did not.

HERMAN BRUNING:

Was appointed grain-inspector at Dubuque, for 1863. Was sworn in and commenced work Feb. 2d, 1863; have been such inspector since that date; was appointed by the mayor, and confirmed by the city council.

Q. How do you inspect and classify grain?

A. By weight and general appearance of it. At first we sent to Chicago and got the inspection-rules there; afterward the Produce Exchange of Dubuque furnished rules, and gave me rules in writing, and I inspected according to them.

Q. State whether Richmond and Jackson, or any other party was allowed to interfere with your inspection?

99 A. They were not.

Q. State what you know, if anything, about some of the cars being leaky.

A. There were a good many leaky when they came in, some days more, some less.

Q. State whether any of them had leaked enough so that you could have observed it on looking into the car?

A. Yes, sir.

Q. How much do you suppose some of the worst ones lost in consequence of being leaky?

A. I cannot exactly tell. Some of them lost five or ten bushels, I believe, and more.

Cross-examined:

Q. State the number of cars that you now recollect, from which five or ten bushels had leaked?

A. I cannot state the number. It is running such a long time I cannot state.

Q. State the number that you now recollect.

A. I could not state exactly the number.

Q. Do you recollect any one car from which such amount leaked. If so, whose car was it?

A. I believe N. C. Ryder had one. It contained wheat.

Q. State any other car, and whose it was, and what it contained?

A. I believe Gibbs and Coats had some. I could not say the number. There was more than one or two contained wheat. There is sometimes more than one car in the same train leaking.

Q. State whether you ever notified the agent of the company that the cars leaked?

100 A. I did.

Q. About what proportion of cars leaked in the years 1866 and 1867?

A. When they were too bad, and nobody was there, I marked them down in my book as leaky. By nobody, I mean the consignees. When they were there, they would see too them.

Q. Did one car in a hundred leak?

A. Yes; more, too.

Q. Did one car in fifty leak in 1866 and 1867?

A. I believe one car in fifty did leak in 1866 and 1867.

Q. Did one car in forty leak during that time?

A. I cannot say for certain. I believe on' car in forty did leak.

HERMAN WILMERS.

Was placed in the elevator to weigh by J. P. Farley.

Q. During the time that you were there, were you at any time interfered with in the discharge of your duties as weigh-master by any one connected with the Dubuque Elevator, either proprietor or employee?

A. No, sir. I agreed to go there by the day. Mr. Farley refused to pay for night work, and I quit. I did not see anything wrong in the manner of weighing grain while I was there.

Q. Were the balances frequently adjusted and found correct?

A. Mr. Fay showed them to me several times—showed them to be balanced. The grain is weighed in the highest part of the ele-

101 vator. It is in the hopper on the same floor where the weigher is, but I think the hopper extends down into the floor.

102 At an argument term of the supreme court of the State of Iowa, begun and held at the city of Dubuque, on Tuesday, the 18th day of April, A. D. 1871—present, the Hon. James G. Day, ch. j.; Hon. Joseph M. Beck, Hon. William E. Miller, Hon. Chester C. Cole, judges; when the following, among other proceedings, were had and done, to wit:

FRIDAY, *April 20th*, 1871.

A. W. RICHMOND ET AL.
vs.
THE DUBUQUE AND SIOUX CITY R'Y CO. and the Illinois Central R'y Co., appellants.

Appeal from Dubuque district court.

On this day this cause coming on for hearing, on motion of defendants for a continuance, and the court, being fully advised in the premisses, sustain said motion, and order that the cause be continued to the October term.

And at the October term of said court, to wit, October 18th, 1871, the following order was made:

By agreement of parties, it is ordered by the court that this cause be continued to the December term at Des Moines.

103 And at the December term of said court, begun and held at the city of Des Moines, on Tuesday, December 7th, 1871, the following order was made:

TUESDAY, *December* 7, 1871.

On this day this cause coming on to be heard, is submitted to the consideration of the court on printed and oral argument of counsel.

And on the 24th day of February, A. D. 1872, there being present the Hon. Joseph M. Beck, ch. j.; Hon. William E. Miller, Hon. Chester C. Cole, Hon. James G. Day, judges—the following order was made, to wit:

This cause coming up for hearing and decision, this 24th day of February, 1872, and the court being fully and sufficiently advised in the premises, it is ordered, adjudged, and decreed that the plaintiffs, Alfred W. Richmond and John Jackson, have and recover against the defendants The Dubuque and Sioux City Railroad Company and The Illinois Central Railroad Company judgment in this court for the sum of seventy-three thousand one hundred eighty-six (73,186) dollars, together with the costs of this suit, taxed at $; and that they have therefor execution; that this judgment is without prejudice to said plaintiffs' claim for damages against said defendants, after the first day of May, A. D. 1870; and that the order of the district court appointing a referee and requiring reports from said defendants to said referee, and granting leave to either party to move for judgment upon the
104 report of said referee, and granting leave to the parties to move said court for a modification of its order, or for an injunction, be, and the same is hereby, reversed and set aside.

And it is further ordered, adjudged, and decreed that the claim of said defendants that the Constitution of the United States and certain acts of the Congress of the United States, one entitled "An act to authorize the construction of certain bridges and to establish them as post-roads," and approved July 25th, 1866; and another entitled "An act to facilitate commercial, postal, and military communication among the several States," and approved June 15th, 1866, render void and of no force and effect the covenants sued on in this action by said plaintiffs in the contract and supplemental contract which are the subject of this action, be, and the same is hereby, denied; and it is adjudged that said Constitution and said acts of Congress do not in any manner affect the validity or force and effect of either or any of said covenants, or of either of said contracts.

105 And on the 29th day of February, 1872, there was filed in the office of the clerk of the supreme court of Iowa, a petition for a writ of error, as follows:

Supreme court of Iowa.

ALFRED W. RICHMOND AND JOHN JACKSON, plaintiffs,
vs.
THE DUBUQUE & SIOUX CITY RAILROAD COMPANY and the Illinois Central Railroad Company, defendants.

To the honorable chief justice of said supreme court:

The petition of The Dubuque and Sioux City Railroad Company and the Illinois Central Railroad Company, above-named, respectfully shews

that, in the judgment and decision of the above-entitled cause by said supreme court of Iowa, there was drawn in question the construction of certain statutes of the United States and certain provisions of the Constitution of the United States, and the said judgment and decision of said court was against the rights, privileges, and exemptions claimed by said petitioners under the same. Your petitioners therefore pray your honor to examine the record in said suit herewith presented to you, and thereupon allow a writ of error in said cause from the Supreme Court of the United States to the supreme court of the State of Iowa, pursuant to the acts of Congress of the United States in such cases made and provided.

The Illinois Central Railroad Company and The Dubuque & Sioux City Railroad Company,

By CRANE & ROOD,
Their Attorneys.

106 (Endorsed as follows:)

The writ of error as in the within petition prayed for, is hereby allowed.

February 28, 1872.

JOSEPH M. BECK,
Chief Justice of the Supreme Court of Iowa.

Filed February 29th, 1872.

C. LINDERMAN, *Clerk.*

And on the 4th day of March, A. D. 1872, there was filed in the office of the clerk of said supreme court a bond, as follows:

Supreme Court of the United States.

ALFRED W. RICHMOND AND JOHN JACKSON, partners,
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY and the Dubuque & Sioux City Railroad Company.

Know all men by these presents that we, The Illinois Central Railroad Company and The Dubuque & Sioux City Railroad Company, as principals, and Henry L. Stout & Richard N. Babbage, of Dubuque County, State of Iowa, are held and firmly bound unto said Alfred W. Richmond and John Jackson, of the State of New York, in the sum of one hundred & fifty thousand dollars, to be paid to the said Alfred W. Richmond and John Jackson, their executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents. Dated, this 28th day of February, A. D. 1872.

107 Whereas the above-named Illinois Central Railroad Company and the Dubuque and Sioux City Railroad Company have prosecuted a writ of error to the Supreme Court of the United States to reverse the final judgment rendered in the above-entitled action by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation is such, if the above-named Illinois Central Railroad Company and The Dubuque and Sioux

City Railroad Company shall prosecute their said writ of error to effect, and answer all costs and damages if said railroad company shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
By J. P. FARLEY,
Division Superintendant.

THE DUBUQUE AND SIOUX CITY RAILROAD COMPANY,
SEAL OF THE DUBUQUE & SIOUX CITY RAILROAD COMPANY.
By C. H. BOOTH, *Secretary.*
HENRY L. STOUT.
RICHARD N. BABBAGE.

Approved this March 2d, 1872.

JOSEPH M. BECK,
Ch. Justice of Iowa.

DISTRICT OF IOWA, *ss:*

We, Henry L. Stout and Richard N. Babbage, sureties to the above bond, being first duly sworn, say, each for himself, that he is a freeholder in the State of Iowa, and is worth the sum of one hundred and fifty thousand dollars in property, not exempt from execution, over and above debts and liabilities.

HENRY L. STOUT.
RICHARD N. BABBAGE.

108 Subscribed and sworn to before me this 29th day of February, A. D. 1872, at Dubuque, in said district.

[SEAL.] H. K. LOVE.
Clerk U. S. D. C.

STATE OF IOWA, *County of Dubuque:*

J. P. Farley, being first duly sworn, deposes and says that he is a division superintendant of the Iowa division of the Illinois Central Railroad; that, as such superintendant he has full and ample authority to sign the name of the said Illinois Central Railroad Company to the foregoing supercedeas-bond, and to bind said company thereby; and, that in pursuance of said authority and by virtue thereof, he signed the name of said company to said bond.

J. P. FARLEY.

Subscribed and sworn to by J. P. Farley, before me, this 1st day of March, 1872.

[SEAL]. JOHN M. BALLOU, *Notary Public.*

STATE OF IOWA, *County of Dubuque, ss:*

Caleb H. Booth, being first duly sworn, deposes and says, that he is the secretary & treasurer of the Dubuque & Sioux City Railroad Company, and has authority to sign the name of said company to above supercedeas-bond; and, in pursuance of such authority, affixed the name and seal of said company to said bond.

C. H. BOOTH.

Subscribed and sworn to before me, by Caleb H. Booth, this 1st day of March, 1872.

[SEAL.] JOHN M. BALLOU, *Notary Public.*

109 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Iowa, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court before you or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between The Dubuque and Sioux City Railroad Company and the Illinois Central Railroad Company, plaintiffs in error, and Alfred W. Richmond and John Jackson, defendants in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and certain statutes thereof, and the decision was against the right, title, privilege, and exemption claimed under said clause of the said Constitution and statutes, a manifest error hath happened, to the great damage of the said The Dubuque and Sioux City Railroad Company and the Illinois Central Railroad Company, plaintiffs in error, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

110

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 29th day of February, in the year of our Lord one thousand eight hundred and seventy-two, and the Independence of the United States the ninety-sixth year.

[SEAL.] GEORGE B. CORKHILL,
Clerk Circuit Court of the United States, Dist. of Iowa.

(Indorsed:) Dubuque & Sioux City R. R. Co. et al. vs. Alfred W. Richmond et al. Writ of error to sup. c't, State of Iowa. Filed Feb. 29, '72. C. Linderman, cl'k sup. court, Iowa.

111 THE UNITED STATES OF AMERICA, *ss:*

To Alfred W. Richmond and John Jackson, greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Iowa, wherein The Dubuque and Sioux City Railroad Company and the Illinois Central Railroad Company are plaintiffs in error, and Alfred W. Richmond and John Jackson are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

112

Witness the Honorable J. M. Beck, chief justice of the said supreme court of the State of Iowa, this 28th day of February, 1872.

JOSEPH M. BECK,
Chief Justice of the Supreme Court of Iowa.

We hereby acknowledge that the within citation was duly served on us, at the city of Dubuque, Dubuque County, Iowa, on this 7th day of June, A. D. 1872, & that we then & there received a correct copy thereof.

A. W. RICHMOND &
JOHN JACKSON
By GRIFFITH & KNIGHT.
Their Attorneys.

I hereby acknowledge that the within citation was duly served on me, at the city of Dubuque, Dubuque County, Iowa, on this 18th day of July, A. D. 1872, & that I then & there received a correct copy thereof.

PRATT SMITH.
Atty for John Jackson & A. W. Richmond.

Indorsed: Supreme Court. A. W. Richmond et al. vs. The D. & S. C. R. R. Co. et al. Citation. Filed July 22, 72. C. Linderman, Clk. sup. court, Iowa.

I, C. Linderman, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the transcript, filed in my office in the case of Alfred W. Richmond and John Jackson, appts. vs. The Dubuque & Sioux City R.R. Co. and The Illinois Central R.R. Co., apts., a full, true, and complete copy of the record-entries of said supreme court therein, and of supersedeas-bond & petition for writ of error in said cause, as full, true, and complete as the same remain on file and of record in my office; and I have attached thereto the original writ of error & citation, and returned copies thereof in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 5th day of September, A. D. 1872.

[SEAL.]

C. LINDERMAN,
Clk sup. Court, Iowa.

Indorsement on cover: No. 462. The Dubuque and Sioux City Railroad Company and The Illinois Central Railroad Company, plaintiffs in error, vs. Alfred W. Richmond and John Jackson. Iowa sup. court. Filed 9th November, 1872.